

**JAY  
ENVIRONMENTAL CONTROL  
AND  
IMPROVEMENT ORDINANCE**

ENACTED: MAY 21, 1988

AMENDED: MARCH 20, 1989

JUNE 19, 1989

OCTOBER 23, 1989

JUNE 18, 1990

MARCH 18, 1991

MARCH 16, 1992

MARCH 15, 1993

NOVEMBER 22, 1993

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SEPTEMBER 29, 2003

DECEMBER 19, 2005

APRIL 27, 2009

This edition contains ordinance amendments through the Twenty-Third Ordinance Amending the Jay Environmental Control and Improvement Ordinance, enacted April 27, 2009.



# Jay Environmental Control and Improvement Ordinance

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# Preface

## GENERAL

The Jay Environmental Control and Improvement Ordinance is a comprehensive regulatory plan to protect and enhance the public health and environment of the Town of Jay and to prevent threats to health and the environment posed by the discharge of pollutants to air, water and land. The Ordinance was the result of a lengthy and thorough consideration to harmonize with federal, state and local environmental laws and regulations. The purposes and policies of the Ordinance are set forth in Section 1-102.

The Ordinance prohibits certain activities that may adversely affect public health and the environment and regulates subdivisions, landfills, point source discharges into water and emissions of air contaminants through permits issued and enforced by the Planning Board.

## ORGANIZATION AND HISTORY

The Ordinance is divided into chapters for general application and chapters for specific environmental concerns. Chapter 1 encompasses the purposes and policies of the Ordinance, statement of authority, and definitions. Chapter 2 establishes the organization and powers of the Planning Board and the Code Enforcement Officer. Chapter 3 sets forth general content requirements for applications, procedures for hearings on applications, fees and appeals procedures. Additional application information requirements for subdivisions, landfills, water discharges and air emissions are prescribed in the chapters pertaining to those topics. Chapters 4A and 4B establish procedures for permit administration and investigations and administrative enforcement actions by the Code Enforcement Officer, Environmental Enforcement Counsel and the Planning Board, for judicial enforcement, and penalties. Chapter 5 regulates subdivisions. Chapter 9 regulates landfills. Chapter 12 regulates water pollution from point sources and Chapter 13 regulates air pollution. The Ordinance also includes three volumes of referenced codes. Each volume includes one or more loose-leaf binders.

The Ordinance was first enacted by vote at a Town Meeting on May 21, 1988. Since its enactment, the Ordinance has been amended twenty-two times, primarily to reflect changes in state and federal law. The First, Second, Third and Fourth Ordinances Amending the Ordinance were enacted on March 20, 1989. The Fifth Ordinance was enacted on June 19, 1989, the Sixth and Seventh Ordinances on October 23, 1989, the Eighth Ordinance on June 18, 1990, the Ninth Ordinance on March 18, 1991, the Tenth Ordinance on March 16, 1992, the Eleventh Ordinance on March 15, 1993, the Twelfth Ordinance on November 22, 1993, the Thirteenth Ordinance on March 21, 1994, the Fourteenth Ordinance on June 20, 1994, the Fifteenth Ordinance on June 19, 1995, the Sixteenth Ordinance on December 18, 1995, the Seventeenth Ordinance on June 17, 1996, the Eighteenth Ordinance on November 25, 1996, the Twentieth Ordinance on September 25, 2000, the Twenty-First Ordinance on September 29, 2003, the Twenty-Second Ordinance on December 19, 2005 and the Twenty-Third Ordinance on April 27, 2009. The Nineteenth Ordinance proposed on June 21, 1999 was not enacted.

This edition of the Ordinance reflects the changes that have occurred through the Twenty-Third Ordinance. Each section amended since original enactment on May 21, 1988, is annotated to include the number and section of the amending ordinance. For example, the notation "First, Sec. 2" following

Section 1-102 means that Section 1-102 was amended by Sec. 2 of the First Ordinance Amending the Jay Environmental Control and Improvement Ordinance.

The Town of Jay may revise the Ordinance at annual or special town meetings to accommodate changes in state and federal law. Persons referring to this Ordinance should obtain from the Town Office any amending ordinances subsequent to the Twenty-Third Ordinance in order to review a current and complete version of the Ordinance.

*Sixteenth, Sec. 3. Seventeenth, Sec. 3 and 4. Eighteenth, Sec. 3. Twentieth, Sec. 3. Twenty-First, Sec. 3. Twenty-Second, Sec. 3, Twenty-Third, Sec. 3.*

## **REFERENCED CODES**

Various sections of the Ordinance refer to statutes, regulation and guidelines administered by the United States Environmental Protection Agency and agencies of the State of Maine. The Jay Ordinance adopts certain of these provisions as its own. For example, Chapter 9 of the Ordinance, Solid Waste Disposal Facilities, adopts Chapters 400-409 of the Maine Solid Waste Management Rules. Chapter 12, Water, adopts the effluent guidelines and standards of 40 Code of Federal Regulation (“CFR”) Parts 129, 401-471.

The codes incorporated by reference may be found in three volumes filed with the Ordinance in the Town of Jay office. Each volume includes one or more looseleaf binders. A Table of Contents is located at the beginning of each binder. Volume I includes the codes referenced in Chapters 1-9 of the Ordinance, covering Subdivisions and Solid Waste Disposal Facilities. Volume II includes codes referenced in Chapter 12, Water. Volume III includes codes referenced in Chapter 13, Air Pollution.

Federal regulation are amended by publication of the amended portions in the Federal Register. Each CFR section and the corresponding Federal Register amendments are filed under the same tab and should be read together in the referenced codes volumes.

The Town of Jay has revised the contents of the volumes on seven occasions to delete superseded regulations and to include changes in regulations. The Town will continue to revise the referenced codes volumes regulations to reflect changes in state and federal law.

# Referenced Codes

## VOLUME I, Codes Referenced in Chapters 1-9

1. An Act Regarding Minimum Lot Sizes and Other Municipal Regulations Concerning Mobile Home Parks, 30-A M.R.S.A. Section 4358(3),
2. Maine Department of Environmental Protection, Maine Solid Waste Management Rules, Chapters 400, 401, and 405.
3. 40 CFR Part 264.147(f), Financial Test for Liability Coverage
4. Maine Primary Drinking Water Standards, adopted pursuant to 22 M.R.S.A. Section 2611
5. Maine Maximum Exposure Guidelines
6. Test Methods for Evaluating Solid Wastes, USEPA, SW-846, 3<sup>rd</sup> Edition
7. Waste Analysis Plans, A Guidance Document, USEPA, EPA/530-SW-84-012, October 1984
8. Procedures for Handling and Chemical Analysis of Sediment and Water Samples, USEPA/Corps of Engineers, May 1981
9. Methods for Chemical Analysis of Water and Wastes, USEPA, EPA600/4-79-020, March 1983
10. Standard Methods for the Examination of Water and Wastewater, APHA/AWNA/WPCF, 16<sup>th</sup> Edition
11. Minimum Lot Size Law, 12 M.R.S.A. Section 4807 et seq.

## Referenced Codes

### **VOLUME II, Codes Referenced in Chapter 12**

1. 40 CFR Part 136
2. Effluent Guidelines and Standards
  - a. 40 CFR Part 129
  - b. 40 CFR Part 401
  - c. 40 CFR Parts 405-436
  - d. 40 CFR Part 439
  - e. 40 CFR Part 440
  - f. 40 CFR Part 443
  - g. 40 CFR Part 446
  - h. 40 CFR Part 447
  - i. 40 CFR Part 454
  - j. 40 CFR Part 455
  - k. 40 CFR Parts 457-461
  - l. 40 CFR Parts 463-469
  - m. 40 CFR Part 471
3. 40 CFR Part 403, General Pretreatment Regulations
4. 38 M.R.S.A. Chapter 3, Article 4-A, Sections 464, 465, 465-A, 465-C, 466, 467
5. Maine Department of Environmental Protection, Chapter 580, Regulations Relating to Sampling Procedures and Analytical Procedures
6. National Recommended Water Quality Criteria: 2002 (Nov. 2002) (U.S. EPA) (water criteria as developed by EPA pursuant to section 304(a) of the Clean Water Act)

**VOLUME III, Codes Referenced in Chapter 13**

1. 40 CFR Part 50, National Primary and Secondary Ambient Air Quality Standards and Appendices
2. 40 CFR Part 60, Standards of Performance for New Stationary Sources; subparts A, D, Da, Db, Dc, E, K, Ka, O, BB, GG, and Appendices.
3. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants; subparts A, E and V
4. Clean Air Act, Section 171, 42 U.S.C. Section 7501 as of 12/93
5. Clean Air Act, Sections 111 and 112, 42 U.S.C. Sections 7411 and 7412, as of 12/93
6. Maine Department of Environmental Protection, Chapter 114, Classification of Air Quality Control Regions
7. State of Maine, Department of Human Services, Derivation of Interim Exposure Guidelines for the Hazardous Air Pollutant Program, 5/90
8. 40 CFR Part 58, Appendix B
9. 40 CFR Part 63, National Emission Standards for Hazardous Pollutants; subparts A, Q, S, MM, PP, QQ, RR, VV, JJJJ, and DDDDD and Appendices.
10. 40 CFR Part 51 and Appendices
11. 40 CFR Part 52 and Appendices
12. 40 CFR Part 53 and Appendices
13. 40 CFR Part 70
14. Amendments to Pulp and Paper NESHAP in 40 CFR Part 9, 65 FR 80755
15. Clean Air Act, Section 182(f)
16. 40 CFR Part 75

*Ninth, Sec. 12. Tenth, Sec. 5. Eleventh, Sec. 5. Thirteenth, Sec. 5. Fifteenth, Sec. 3. Seventeenth, Sec. 5, 5-A, 5-B, 5-C, 5-D and 5-E. Seventeenth, Sec. 123. Twenty-First, Sec. 4. Twenty-Second, Sec. 4.*

# CHAPTER 1

## GENERAL PROVISIONS

Part

1. Short Title, Purposes, Policies and Authority
2. General Definitions

### **PART 1**

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### **SHORT TITLE, PURPOSES, POLICIES AND AUTHORITY**

Section

- §1-101 Short Title
- §1-102 Purposes and Policies
- §1-103 Authority
- §1-104 Territorial Application
- §1-105 Severability
- §1-106 Effective Date and Applicable Dates
- §1-107 Savings Clause
- §1-108 Other Rights

#### **§1-101 SHORT TITLE**

This Ordinance shall be known and may be cited as the “**Jay Environmental Control and Improvement Ordinance**”.

#### **§1-102 PURPOSES AND POLICIES**

A. The purposes and policies of this Ordinance are:

The Town of Jay has enacted this Ordinance for the purpose of protecting the public health, safety and welfare of the inhabitants of the Town of Jay and for protecting and enhancing the Town of Jay's environment. This Ordinance is enacted pursuant to the Home Rule powers bestowed upon the Town of Jay by the Constitution and laws of the State of Maine. This Ordinance is intended to provide a comprehensive scheme of environmental regulation at the local level in furtherance of the

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policies espoused by federal and state environmental laws and regulations for the protection of the human health and environment. This Ordinance is enacted to prevent threats to the public health and environment posed by the discharge of pollutants and contaminants, whether to air, water or land.

This Ordinance is the result of a lengthy and thorough consideration of the alternatives available to the Town of Jay for protecting the human health and environment and this Ordinance seeks to harmonize with federal, state and local environmental laws and regulations. Therefore, to the extent feasible, procedures under this Ordinance will encourage cooperation and sharing of information with other permitting agencies of government and devise forms and filing requirements which correspond to or can be satisfied by those employed by other governmental agencies. Where it aids the timely execution of these duties, the Board may consent to hold hearings jointly with other agencies of government considering similar permits or approvals.

In addition to the foregoing, the purposes and policies of this Ordinance are:

1. To provide for the protection of the human health and environment in the Town of Jay;
2. To conserve and protect the Town of Jay's natural resources including its flora and fauna;
3. To provide for the protection of surface water, ground water and drinking water in the Town of Jay;
4. To provide for water quality which will enhance the protection and propagation of fish and wildlife and will provide for recreation in and on state waters within the Town of Jay;
5. To control and monitor through a permitting system the amount of pollution which can be discharged or emitted into the Town of Jay's environment;
6. To foster local control of the environment through the exercise of the Town of Jay's home rule authority:
  - a. By bestowing certain powers and duties upon the Town of Jay's Planning Board and the Town of Jay's Code Enforcement Officer;
  - b. By establishing uniform procedures and guidelines for the protection of public health, welfare and safety and the environment during emergency conditions which create or are likely to create a substantial and immediate danger;
  - c. By providing uniform procedures and guidelines to protect the public health, welfare and safety and the environment, including air, water, and land;
  - d. By providing procedures for abating and controlling the pollution of the Town of Jay's environment; and
  - e. By providing a system for the imposition of penalties, stop orders and injunctions for violations of this Ordinance in order to foster compliance with this Ordinance and the terms and conditions of any permits, orders or approvals issued pursuant to this Ordinance;
7. To implement Federal and State policies that encourage municipalities to regulate the environment;

8. To provide for the careful planning, analysis, and management of air contaminants, pollutant and contaminant discharge, solid waste disposal and land use in the Town of Jay to prevent damage to human health and the environment;
9. To restore and maintain the chemical, physical, and biological integrity of the Town of Jay's air, water and land;
10. To control, regulate, abate, reduce, and prevent pollution of the Town of Jay's air by smoke, dust, fumes, particulate matter, gases, odors, mists, vapors, and similar matters or any combination thereof;
11. To control, regulate, abate, reduce, and prevent pollution of the Town of Jay's waters by the discharge of pollutants or contaminants in such waters;
12. To control, regulate, abate, reduce, and prevent pollution of the Town of Jay's land, air and waters by solid waste disposal;
13. To regulate open dumping of solid waste which is a potential source of contamination of drinking water supplies, ground water and surface water;
14. To provide for solid waste management in the Town of Jay;
15. To provide uniform procedures and standards in regulating and approving subdivisions in the Town of Jay;
16. To provide protection for the Town of Jay's natural resources, which will protect and preserve property values, recreational opportunities and the quality of life of the inhabitants of the Town of Jay;
17. To provide a comprehensive system and clear guidelines for protecting the environment of the Town of Jay, including air, water, solid waste disposal and land use concerns; and
18. To encourage pollution prevention through appropriate voluntary, cooperative and collaborative activities involving representatives of the Town and others including individuals and companies residing or doing business in Jay; provided, however, nothing said or done by any one or more members of the Planning Board or the Code Enforcement Officer or any other representative of the Town of Jay in any such collaborative or cooperative program shall be legally sufficient to work any estoppel or otherwise to commit or bind the Board or the Town on any issue relating to any provision of this Ordinance or any permit or order issued hereunder.

B. This Ordinance shall be liberally construed to effectuate its purposes and policies.

*First, Sec. 2. Thirteenth, Sec. 6. Fourteenth, Sec. 4. Seventeenth, Sec. 6 and 7.*

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### **§1-103 AUTHORITY**

This Ordinance is enacted pursuant to the Constitution of the State of Maine and the laws of the United States of America and the laws of the State of Maine.

*First, Sec. 3. Fifth, Sec. 2. Tenth, Sec. 6. Seventeenth, Sec. 8.*

### **§1-104 TERRITORIAL APPLICATION**

This Ordinance applies to all persons conducting activities in the Town of Jay which are regulated by this Ordinance.

### **§1-105 SEVERABILITY**

If any provision or section of this Ordinance, or the application thereof to any person or circumstance, is held void or invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect in whole or in part without the invalid provision or application, and to this end each provision of this Ordinance is declared to be severable and independent. It is the intent of the Town of Jay that each and every part, clause, paragraph, section and subsection of this Ordinance be given effect to the degree possible.

### **§1-106 EFFECTIVE DATE AND APPLICABLE DATES**

A. This Ordinance shall be effective upon enactment by the annual town meeting or a special town meeting of the Town of Jay. It shall apply immediately to all new sources of pollution, the construction or operation of which begins after the date of such enactment. Sections 9-701 and 9-801 of this Ordinance shall also apply immediately upon enactment to the closure of a solid waste landfill that occurs after the date of such enactment.

B. The Board shall approve and furnish forms as required by this Ordinance for each permit or approval. Within six (6) months of the Board's approval of the form of application for any permit or approval required under this Ordinance, every person subject to this Ordinance shall file with the Board an application for each such permit or approval required.

C. Any existing use, activity or discharge of a pollutant or contaminant in the Town of Jay at the time of enactment of relevant portions of this Ordinance which is subject to regulation pursuant to this Ordinance, is deemed an "Existing Use." Any person owning or operating an Existing Use shall make application for all permits or approvals governing activities subject to this Ordinance within six (6) months after the Board approves the forms for applications under any provision of this Ordinance. During this period for application an Existing Use may continue to operate under the operating conditions and levels affecting the discharge of pollutants or contaminants at the time of enactment of relevant portions of this Ordinance and as permitted or allowed by state and federal law, permits, licenses or approvals.

Existing Uses may not continue to operate without the required permit(s) or approval(s) under this Ordinance beyond a point six (6) months after the Board approves the forms for applications under

any provision of this Ordinance; provided, however, that the owner or operator of an Existing Use who has made timely application for all necessary permits or approvals under this Ordinance and pays the application fees when due in accordance with Section 3-113(A), shall be allowed to continue under the operating conditions and levels affecting discharge of pollutants or contaminants as of the effective date of said provision of the Ordinance until such time as the Board has acted in the negative to deny a particular required permit or approval. Permission for an Existing Use to continue to operate pending a decision of the Board may be extended by the Board for good cause or with consent of the Applicant. Nothing in this provision is meant to override or contradict the obligations of any agencies of government to protect the public health, safety, welfare and environment against public nuisances or imminent threats.

D. Prior to the termination of an existing permit or approval under this Ordinance, an Applicant subject to this Ordinance shall make reapplication for a renewed or new permit or approval at least one-hundred eighty (180) days prior to the specified termination of said permit or approval. Only if such application is timely made in a complete and satisfactory manner, the applicant shall be entitled to continue operation under the current permit or approval past the specified termination date of same, until the Board renders a decision on the application for renewal or new permit.

*First, Sec. 4. Sixth, Sec. 2.*

## **§1-107 SAVINGS CLAUSE**

Nothing in this Ordinance may be construed to affect any substantive right or obligation gained by any person solely under the provisions of any law repealed or amended by this Ordinance. All substantive rights and obligations created under the provisions of any law repealed or amended by this Ordinance continue in effect.

All officers, officials or other persons elected, appointed, hired or otherwise selected to act in any capacity under provisions repealed or amended by this Ordinance shall continue in that capacity under the provisions of this Ordinance.

*First, Sec. 5.*

## **§1-108 OTHER RIGHTS**

Nothing in this Ordinance is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damages or other relief on account of injury to persons or property due to any violation of this Ordinance or to activity subject to this Ordinance and to maintain any action or other appropriate procedure therefor; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances.

Nothing in this Ordinance is intended, nor shall be construed, to limit, impair or abridge, substantively or procedurally, the powers of the Town of Jay under state or common law to protect the general health, safety and welfare by initiating, prosecuting and maintaining actions concerning activities not in violation of this Ordinance.

*First, Sec. 6. Sixth, Sec. 3.*

# CHAPTER 1

## PART 2

### GENERAL DEFINITIONS

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Section

§1-201 General Definitions

#### §1-201 GENERAL DEFINITIONS

Subject to additional definitions contained in the subsequent Chapters of this Ordinance which are applicable to specific parts or parts thereof, and unless the context otherwise requires, in this Ordinance the following terms have the following meanings:

**A. Applicant.** “Applicant” means any person applying for a permit, certification, approval, or similar form of permission, or a modification, repeal or renewal thereof, from the Jay Planning Board.

**A-1. Begin Construction.** “Begin construction” means, in general, initiation of physical onsite construction activities which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities, which mark the initiation of the change.

**B. Board.** “Board” means the Jay Planning Board.

**C. B.T.U.** “B.T.U.” means British Thermal Units.

**D. Code Enforcement Officer.** “Code Enforcement Officer” means the Jay Code Enforcement Officer.

**E. Day.** “Day” means calendar day.

**E-1. Existing Source.** “Existing source” means any source of a pollutant or contaminant within the Town of Jay which began construction, operation or discharge prior to the time of enactment of relevant portions of this Ordinance.

**F. Contaminant.** “Contaminant” means any substance that is spilled, discharged, leaked, pumped, poured, emitted, emptied, discharged, injected, escaped, leached, dumped, or disposed into the environment of the Town of Jay in sufficient quantities or of such characteristics or duration as to be injurious to humans, plant or animal life or property, or which unreasonably interferes with the enjoyment of life or property in the Town of Jay.

**G. Facility.** “Facility” means any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft from which there is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escape, leaching, dumping or disposing of a pollutant or containment into the environment.

**H. Interested Person.** “Interested Person” means any person having a property right or interest in a facility or who may be aggrieved by the granting, modification, repeal or denial of any permit, approval or order by any proceeding under this Ordinance. The meaning must be determined according to the particular purposes of, and matter involved in, any proceeding.

**I. Issuing Authority.** “Issuing Authority” means the Board.

**J. Jay Air Emission Permit.** “Jay Air Emission Permit” means the permit which may be issued by the Board pursuant to Sections 13-101 et seq. of this Ordinance.

**K. Jay Solid Waste Disposal Facility Permit.** “Jay Solid Waste Disposal Facility Permit” means any Solid Waste Disposal Facility Permit which may be issued pursuant to Sections 9-101 et seq. of this Ordinance.

**L. Jay Water Permit.** “Jay Water Permit” means the permit which may be issued by the Board pursuant to Sections 12-101 et seq. of this Ordinance.

**L-1. M.D.E.P.** “M.D.E.P.” means the Maine Department of Environmental Protection or the Maine Board of Environmental Protection.

**M. New Sources of Pollution.** “New sources of pollution” means any source of a pollutant or contaminant which begins construction, operation or discharge after the effective date of relevant portions of this Ordinance.

**N. Ordinance.** “Ordinance” means the several chapters comprising this Ordinance, as may be amended from time to time.

**O. Permit.** “Permit” means any permit, certificate, approval, registration, schedule of compliance or similar form of permission required or authorized by this Ordinance, and shall include but not be limited to the Jay Air Permit, Jay Solid Waste Facility Permit, Jay Water Permit and Jay Subdivision Permit, as applicable.

**P. Permit Holder.** “Permit holder” means a person who has received a permit pursuant to any chapter of this Ordinance.

**Q. Person.** “Person” means an individual, corporation, partnership, association, Federal, state or local governmental entity, or a combination thereof, and the agents of same.

**R. Person Aggrieved.** “Person Aggrieved” means any person who because of an act or failure to act by the issuing authority, may suffer an injury, in fact, which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in this Ordinance. Such person must specify in writing sufficient facts to allow the Board to determine whether or not the person is aggrieved.

**S. Pollutant.** “Pollutant” means any substance that is spilled, leaked, pumped, poured, emitted, emptied, discharged, injected, escaped, leached, dumped or disposed into the environment of the Town of Jay in sufficient quantities or of such characteristics or duration as to be potentially

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injurious to human, plant or animal life or property, or the enjoyment of life or property in the Town of Jay.

**T. Respondent.** “Respondent” means any person alleged to have violated any provision of this Ordinance or the terms of any permit or approval issued pursuant to this Ordinance.

**U. Selectmen.** “Selectmen” means the town officers elected to the Jay Board of Selectmen by the residents of the Town of Jay at the annual town meeting or a special town meeting.

**V. Transfer.** “Transfer” means the transfer of property which is the subject of any permit, approval or order under this Ordinance including the sale or lease of such property, or any other transaction or proceeding through which the property undergoes a change in ownership including, but not limited to, the sale of 50 percent or more of the stock of or interest in a corporation, partnership or any other entity which owns the property which is the subject of a permit, approval or order, the sale of stock in the form of a statutory merger or consolidation sale of the controlling share of the assets, change in the identity or financial reorganization of a corporation, partnership or any other entity which owns the property which is the subject of a permit, approval or order, but excluding corporation reorganization not substantially affecting the ownership of the property which is the subject of a permit, approval or order issued pursuant to this Ordinance.

*First, Sec. 7, 8, 9, 10, 11, 12 and 13. Sixth, Sec. 4 and 5. Seventeenth, Sec. 9, 10, 11, 12 and 13.*

# CHAPTER 2

## PLANNING BOARD-CODE ENFORCEMENT OFFICER

### PART 1

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### PLANNING BOARD

Section

- §2-101 Short Title
- §2-102 Establishment
- §2-103 Composition
- §2-104 Appointment
- §2-105 Terms of Office
- §2-106 Vacancies
- §2-107 Removal
- §2-108 Compensation
- §2-109 Officers
- §2-110 Meetings, Quorum, Agenda, Materials
- §2-111 Powers and Duties
- §2-112 Appeals

*Seventeenth, Sec. 14.*

### §2-101 SHORT TITLE

This Chapter shall be known and may be cited as the “Jay Environmental Control and Improvement Ordinance--Planning and Code Enforcement.”

### §2-102 ESTABLISHMENT

The Town of Jay hereby repeals the authority for the Planning Board in existence on the effective date of this Ordinance and establishes the Jay Planning Board pursuant to Article VIII, Part Second of the Maine Constitution and the laws of the State of Maine, including, but not limited to 30-A M.R.S.A. Section 3001.

## CHAPTER 2

*First, Sec. 14. Fifth, Sec. 3.*

### **§2-103 COMPOSITION**

The Board shall consist of eight (8) members and up to two (2) alternate members. Members of the Board and alternate members shall be residents of the State of Maine, at least eighteen 18 years of age and citizens of the United States at all times during their terms, and shall neither be officers nor employees of the Town of Jay or any of its boards, agencies or departments.

An alternate member shall attend all meetings of the Board and participate in its proceedings, but may vote only when designated by the Chairman to sit for a member. If any member or alternate member misses three (3) or more consecutive meetings of the Board then it may be cause for removal of such member.

When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the Chairman, the Chairman shall designate an alternate member to sit and vote in his or her stead.

### **§2-104 APPOINTMENT**

The members of the Board and alternate members shall be appointed by the Board of Selectmen. The town manager or any individual selectman only shall have the authority and power to nominate one or more individuals for consideration of the Board of Selectmen for appointment to the Board. At least fourteen (14) days prior to a decision on nominees by the Board of Selectmen, the names of all nominations shall be posted by the Town Clerk in one or more conspicuous public places in the Town of Jay and notice shall be published once in a newspaper having a general circulation in the Town of Jay. The Board of Selectmen may then, in its sole discretion, hold a public hearing on the appointment of any nominee for the Board. In such case, the time period within which the Board of Selectmen shall decide upon the nomination shall be extended by up to a thirty (30) day period as the Board of Selectmen shall determine. If a public hearing is held on any nomination, the Board of Selectmen may use the notice and procedural requirements set forth in Chapter 3, Section 3-107 of this Ordinance.

*Seventeenth, Sec. 15. Twenty-First, Sec. 5.*

### **§2-105 TERMS OF OFFICE**

Except for Initial Appointees as specified below, the term of each member and alternate member shall be five (5) years. Members shall serve until their successors are duly appointed, qualified and assume their duties.

Initial Appointees. Initially, and as provided in Section 2-104, two members shall serve for 1 year; two members for 2 years, two members for 3 years; two members for 4 years; and two members for 5 years. The Board of Selectmen shall determine which Initial Appointees shall serve for which number of years.

*Seventeenth, Sec. 16.*

## **§2-106 VACANCIES**

The Board of Selectmen may declare a vacancy on the Board upon the nonacceptance, resignation, death, removal, permanent disability or incompetency of any member, relocation of a member's place of residence outside the State of Maine, or failure of any person to qualify for office. In such circumstances, the Board of Selectmen shall fill all positions of members or alternate members; pending any such action, the Chairman may designate an alternate member to act to fill a vacancy.

*Seventeenth, Sec. 17. Twentieth, Sec. 4.*

## **§2-107 REMOVAL**

The Board of Selectmen may remove any member or alternate member of the Board for cause, after notice and hearing. The term "cause" shall mean conduct or conflict affecting the ability and fitness of the member or alternate member to perform his duties.

The notice provided hereunder shall be in writing and shall state the reasons for the proposed removal and inform the member or alternate member of his right to a hearing before the Board of Selectmen within thirty (30) days of receipt of the notice. This hearing may be held in executive session if the requirements of 1 M.R.S.A. 405, as amended by PL 1987, c. 769, Sec. 1, are met or, upon request by the member or alternate member to be removed, an open meeting may be held in accordance with 1 M.R.S.A. 401 et seq. and this Ordinance. Any meeting shall be held utilizing procedures established for enforcement hearings in Chapter 4B herein.

*First, Sec. 15. Thirteenth, Sec. 8. Seventeenth, Sec. 18.*

## **§2-108 COMPENSATION**

All members and alternate members of the Board shall receive compensation at the rate of \$20 for each meeting attended.

*Tenth, Sec. 7. Eighteenth, Sec. 4.*

## **§2-109 OFFICERS**

### **A. Election of Officers.**

The Board shall, by majority vote, elect a Chairman, Vice-Chairman and Secretary at an annual organizational meeting held in September or, in the case of Initial Appointees or upon the resignation, removal or cessation of service of any of the officers, as soon thereafter as practical for the purpose of filling any vacancies. The Chairman, Vice Chairman and Secretary shall each serve a term of one year or until his or her successor is duly elected by the Board. The Chairman, Vice Chairman and Secretary may serve successive terms, if so elected.

### **B. Chairman.**

## CHAPTER 2

The Chairman shall preside at all meetings, if present, shall prepare the agenda as provided in Section 2-110 (c) herein, shall call special meetings and workshops when necessary, shall transmit reports, plans and recommendations of the Board to the appropriate governing authority, and shall fulfill all the customary functions of his or her office. The Chairman may also administer oaths.

### **C. Vice-Chairman.**

In the absence of the Chairman, the Vice-Chairman shall act as chairperson and shall have all the powers of Chairman.

### **D. Secretary.**

The Secretary, or any other person so employed or so designated by the Board, shall assist the Chairman in preparing the agenda for Board meetings and proceedings, send out notices for meetings, public hearings and other proceedings of the Board, record, maintain and show the vote of each member on every question in which a formal recorded vote is made under the procedure of the Board or his or her absence or failure to vote, and shall maintain a permanent record of all correspondence, findings, resolutions and determinations of the Board. All records shall be deemed public and may be inspected at reasonable times. The Secretary shall also make such certifications of Board action as may be required from time to time.

## **§2-110 MEETINGS, QUORUM, AGENDA, MATERIALS**

### **A. Meetings.**

Regular meetings of the Board shall be held at least monthly, or as provided by rule of the Board unless excused by the Chairman.

Special meetings may be called by the Chairman, the Chairman designated for a particular matter or any four (4) members of the Board.

The Board may hold executive sessions as provided in the Maine Freedom of Access Act, 1 M.R.S.A. 401 et seq., otherwise all meetings, hearings, proceedings and deliberations of the Board shall be open to the public in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. 401 et seq.

Workshops may be called by the Chairman or members designated by the Chairman for the presentation of information. Workshops shall be informational only, shall not be used by the Board for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board for the formulation of formal decisions on any matter.

Any member of the Board may voluntarily disqualify himself or herself from voting on a particular matter for any reason, including conflict. In addition, a member shall be disqualified from voting on a particular matter for any reason by a majority vote of the members present and voting, except the member whose disqualification is at issue shall not vote on his or her own disqualification.

**B. Quorum.**

No business shall be transacted by the Board without a quorum. A quorum shall consist of four (4) members or alternate members authorized to vote. The Board shall act by majority vote, calculated on the basis of the number of members present and voting. If less than a quorum is present, the meeting may be adjourned for a period not exceeding three (3) weeks at any one time.

**C. Agenda.**

No item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than ten (10) days prior to the date of a meeting or other proceeding, provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submission requirement. The Chairman shall determine the agenda in such a manner as to facilitate the execution of the duties of the Board. The Board may table any item of business or plan to a future Board meeting.

**D. Materials.**

Submittals associated with an item of business or plan placed on the Board agenda shall be provided to the Board not later than ten (10) days prior to Board consideration of that submittal provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submission requirement.

*First, Sec. 16. Sixth, Sec. 6. Tenth, Sec. 8. Seventeenth, Sec. 19 and 20, Twenty-Third, Sec. 4.*

**§2-111 POWERS AND DUTIES**

The Board shall have the following powers and duties:

- A. To prepare and recommend to the Board of Selectmen a comprehensive plan as defined in 30-A M.R.S.A. Section 4301, et seq., and to review and make recommendations on all investigations, reports and plans relating to the planning and development of the Town of Jay or affecting the comprehensive plan;
- B. To hear and review applications for a Jay Subdivision Permit and to grant, grant with conditions, modify, repeal, or deny a Jay Subdivision permit;
- C. To hear and review applications for a Jay Solid Waste Disposal Facility Permit and to grant, grant with conditions, modify, repeal or deny a Jay Solid Waste Disposal Facility Permit;
- D. To hear and review applications for a Jay Water Permit and to grant, grant with conditions, modify, repeal or deny a Jay Water Permit;
- E. To hear and review applications for a Jay Air Emission Permit and to grant, grant with conditions, modify, repeal or deny a Jay Emission Air Permit;

## CHAPTER 2

E-1. To administer enforcement proceedings including, but not limited to conducting enforcement hearings, to assure compliance with this Ordinance and other applicable Jay Ordinances;

F. To exercise such powers as are provided to the Board by the several Ordinances of the Town of Jay and the Constitution and laws of the State of Maine;

G. To perform such duties as delegated and requested by the Board of Selectmen; and to perform such duties as requested by other public agencies, as the Board determines is proper and appropriate;

H. To make such investigations, maps and reports relating to the planning and development of the Town of Jay as needed to fulfill the requirements of the several ordinances of the Town of Jay, the Constitution and the laws of the State of Maine;

I. To obtain such goods and services, and employ or contract with such staff, including but not limited to a Planning Director, attorneys, engineers and other professionals as may be necessary to carry out its duties hereunder and to pay for such expenses within the limits of appropriations made for the purpose;

J. To hold hearings jointly with other agencies of the government in connection with activities which are subject to the provisions of this Ordinance;

K. To issue such orders as necessary to properly administer and to ensure compliance with the Ordinance; and

L. To issue subpoenas for the attendance of witnesses or for the production of documents as follows:

**1. General.** At the request of the Board, or any member thereof, or at the request of the Code Enforcement Officer, the Environmental Enforcement Counsel, or an applicant in any proceeding under Chapter 3 or a respondent in any proceeding under Chapter 4-B, the presiding officer may issue subpoenas for the attendance of witnesses or for the production of documents.

**2. Form.** Every subpoena so issued shall bear the name of the Board, the name of the issuing officer and shall command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena shall also advise of the quashing procedure provided herein.

**3. Service.** Unless receipt of the subpoena is acknowledged by the witness, it shall be served by a person who is not a party to the proceeding and is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named in it and tendering the fees and mileage paid to witnesses in the superior courts of this state.

**4. Return.** The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the Board. Failure to make such proof of service shall not affect the validity of such subpoena and service.

**5. Quashing.** On motion made promptly, and in any event before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer may (a) quash or modify

the subpoena on a finding that it is unreasonable or required evidence not relevant to any matter in issue, or (b) condition denial of the motion on just and reasonable terms. Any person requesting a hearing on a motion to quash a subpoena shall be granted a hearing before the Board upon such motion.

**6. Denial of Subpoena.** The Board may condition denial of the subpoena upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

*First, Sec. 17, 18 and 19. Fifth, Sec. 4. Sixth, Sec. 7. Tenth, Sec. 9. Seventeenth, Sec. 21, 22 and 23. Eighteenth, Sec. 5.*

## **§2-112 APPEALS**

An appeal from any final decision or action of the Board may be taken by any aggrieved party in accordance with Chapter 3 and Chapter 4B, as may be appropriate.

*First, Sec. 20. Thirteenth, Sec. 9.*

## **PART 2** **CODE ENFORCEMENT OFFICER**

§2-201 Establishment

§2-202 Appointment; Term

§2-203 Powers and Duties

§2-204 Compliance

§2-205 Investigation

§2-206 Enforcement

*Thirteenth, Sec. 7.*

### **§2-201 ESTABLISHMENT**

The Town of Jay hereby establishes the office of Code Enforcement Officer and the office of Deputy Code Enforcement Officer.

*Twentieth, Sec. 5.*

### **§2-202 APPOINTMENT; TERM**

The Code Enforcement Officer shall be appointed by July 1 of each year by the Board of Selectmen for a term of one year. A Code Enforcement Officer may be reappointed for an unlimited number of

## CHAPTER 2

successive one year terms by the Board of Selectman. In addition, the Board of Selectmen may appoint a Deputy Code Enforcement Officer.

The Code Enforcement Officer and the Deputy Code Enforcement Officer, if any, shall be residents of the State of Maine, at least 18 years of age and citizens of the United States at all times during his or her term. The Code Enforcement Officer shall be certified, and the Deputy Code Enforcement Officer may be certified: (a) under the provisions of 38 M.R.S.A. Section 441, or its successor, as familiar with court procedures, and (b) as a code enforcement officer under the provisions of 30-A M.R.S.A. Section 4451.

The Board of Selectmen may remove a Code Enforcement Officer or the Deputy Code Enforcement Officer for cause, after notice and hearing utilizing similar procedures to those specified in Section 2-107 herein for the removal of a Board member. The term “cause” shall mean conduct or conflict affecting the ability and fitness of the Code Enforcement Officer, or the Deputy Code Enforcement Officer, to perform his or her duties. If a Code Enforcement Officer or the Deputy Code Enforcement Officer, if any, is unable to act because of interest, physical incapacity, absence or other reason satisfactory to the Board of Selectmen, the Board of Selectman shall designate another person to fill the vacancy.

*First, Sec. 21. Fifth, Sec. 5. Twentieth, Sec. 6.*

### **§2-203 POWERS AND DUTIES**

#### **A. Powers Generally.**

1. The Code Enforcement Officer shall be empowered to execute the duties of his or her office in a manner necessary and proper to effectuate the provisions of this Ordinance, the Jay Shoreland Zoning Ordinance and other ordinances of the Town of Jay.
2. The Code Enforcement Officer shall have the power to enter any property at reasonable hours and to enter any building with the consent of the property owner, occupant or agent, to inspect the property or structure for compliance with this Ordinance, the Jay Shoreland Zoning Ordinance and other Ordinances of the Town of Jay.
3. The Code Enforcement Officer shall have the power to represent the Town of Jay in District Court in the prosecution of alleged violations of this Ordinance, the Jay Shoreland Zoning Ordinance and other ordinances of the Town of Jay.
4. The Code Enforcement Officer shall have the power to obtain such goods and services and to contract with attorneys, engineers and other professionals as may be necessary to carry out his or her duties hereunder within the limits of appropriations made for the purpose.
5. The Deputy Code Enforcement Officer shall have the powers duties, obligations, and liabilities of the Code Enforcement Officer when the Code Enforcement Officer is absent or unable to perform the duties of Office. The Code Enforcement Officer may distribute the duties of Office to the Deputy Code Enforcement Officer as deemed necessary for economy and efficiency in administration.

#### **B. Duties.**

The duties of the Code Enforcement Officer shall be to enforce this Ordinance, the Jay Shoreland Zoning Ordinance and other ordinances of the Town of Jay that specifically authorize enforcement by the Code Enforcement Officer.

*Thirteenth, Sec. 10. Twentieth, Sec. 7. Twenty-First, Sec. 6.*

## **§2-204 COMPLIANCE**

The Code Enforcement Officer shall be responsible for overseeing compliance with the provisions of the Ordinance and the terms of any permits issued pursuant to the Ordinance as set forth in Chapters 3 and 4A and compliance with the Jay Shoreland Zoning Ordinance and the Jay Floodplain Management Ordinance.

*Thirteenth, Sec. 11.*

## **§2-205 INVESTIGATION**

The Code Enforcement Officer may investigate alleged violations of this Ordinance as set forth in Chapter 4A.

*Thirteenth, Sec. 12. Fourteenth, Sec. 5.*

## **§2-206 ENFORCEMENT**

The Code Enforcement Officer shall act in an advisory capacity to the Board during any enforcement proceedings, including enforcement hearings as set forth in Chapter 4B.

*Thirteenth, Sec. 13.*



# CHAPTER 3

## ADMINISTRATIVE

Section

- §3-101 Application Requirements
- §3-102 Public Notice of Application
- §3-103 Public Access to Information
- §3-104 Confidentiality
- §3-105 Board Decisions
- §3-106 Action Prior to Hearing or Final Decision
- §3-107 Public Hearings
- §3-108 General Evidence
- §3-109 Documentary and Real Evidence
- §3-110 The Record and Burden of Proof
- §3-111 Proposed Findings and Conditions
- §3-112 Permit Conditions
- §3-113 Appeals
- §3-114 Advisory Rulings
- §3-115 Environmental Reserve Fund and Fees
- §3-116 Forms
- §3-117 Service and Filing of Documents
- §3-118 Computation and Enlargement of Time
- §3-119 Orders and Decisions Effective
- §3-120 Revocation, Modification or Suspension of Permits

*Tenth, Sec. 10. Thirteenth, Sec. 14. Seventeenth, Sec. 24. Twenty-Second, Sec. 6.*

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### §3-101 APPLICATION REQUIREMENTS

#### A. Contents of Application.

**1. Forms.** Application forms shall be promulgated by the Board and shall require sufficient information as the Board deems necessary or desirable in order to process the application for a permit in accordance with the provisions of this Ordinance.

**2. Modification of a Permit.** Any request by an applicant for a modification of a permit issued pursuant to this Ordinance shall comply with the provisions for application for a permit as contained in this Ordinance. The Applicant may incorporate by reference materials already in the permit record and which may be conveniently identified; by procedural order, the Board may order the Applicant to reproduce additional copies of materials previously filed for the convenience of the Board or the Board's Staff in reviewing the modification application.

**3. Projects Requiring More Than One Application.** Upon receipt of an application for a permit for an activity which will require more than one permit from the Board, the Board may require the applicant to submit all other required permit applications prior to the Board's consideration of any application.

**4. Title, Right or Interest.** The Board will consider an application only when the applicant has demonstrated sufficient title, right, or interest in all of the property which is the subject of such permit. An applicant shall demonstrate in writing, and by affidavit when so designated by the Board, sufficient title, right, or interest, as follows:

a. When the applicant owns the property or an easement(s) on the property, a copy of the deed(s) or easement(s) to the property shall be supplied;

b. When the applicant is a lessor or lessee of the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the property including reclamation, closure and post closure care, where required;

c. When the applicant has an option to buy or lease the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title or a leasehold of sufficient duration to permit construction and reasonable use of the property including reclamation, closure and post closure care, where required;

d. When the applicant has eminent domain power over the property, evidence shall be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right, or interest as determined by the Board;

e. When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license or amendment of a license

from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification shall be supplied; or

f. When the applicant has a written agreement with the landowner which permits the applicant to spread or apply waste material that will be utilized by the landowner over an extended period of time, a copy of that agreement shall be supplied.

**5. Service.** All applications shall contain a designation of a person in the State of Maine on whom all orders and notices may be served and to whom all other correspondence regarding the application should be sent.

**6. Copies of Federal and State Permits.** The applicant shall, as part of the application process, submit to the Board copies of the most recent federal and state pollution control permits, approvals and licenses, including renewals, modifications, or extensions thereto, regulating an activity for which a permit is sought under this Ordinance. In addition, the applicant shall make available for inspection and copying all monitoring required by any state or federal permits and licenses; operating and maintenance records; records documenting spills, accidental discharges or emissions, and all other unlicensed discharges, emissions and releases; and reports on which the permits or licenses were based.

**B. Continuing Data Requirements.** The applicant shall have a continuing duty to provide copies of all renewed or modified federal and state pollution control permits, approvals and licenses as well as accompanying reports, applications and records of data, for activities which also have or require a permit under this Ordinance and to inform the Board promptly in writing of any modification, suspension or revocation of any such federal and state permits, approvals and licenses, and any official communication from any federal or state official or agency alleging non-compliance with any ordinance, statute, regulation, permit, approval or license.

*First, Sec. 22. Sixth, Sec. 8. Thirteenth, Sec. 15. Fourteenth, Sec. 6 and 7. Seventeenth, Sec. 25.*

### **§3-102 PUBLIC NOTICE OF APPLICATION**

A. Except as provided in Chapter 5, Section 5-402(F), and Chapter 9, Section 9-403(E), the Board shall, within 10 days of the date on which an application for a new permit, permit renewal, or a permit transfer was filed, cause to be given public notice of the filing, inviting within twenty (20) days written comments on the application.

B. Except as provided in Chapter 5, Section 5-402(F), the Board shall, within 15 days of the date an application for a new permit, permit renewal or a permit transfer has been determined acceptable for processing by the Board in accordance with Section 3-105(A), cause to be given public notice of the Board's determination, inviting within thirty (30) days written comments on the application and requests for public hearing. Requests for public hearing shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

Such notice shall include the following information:

1. Name and address of the applicant;
2. Title and legal citation of the Ordinance under which the application is being processed;

## CHAPTER 3

3. Location of the proposed activity;
4. Summary of the proposed activity; and
5. Telephone number and mailing address of the Town official to whom written comments and hearing requests should be directed.
6. The date by which public comment must be received.

*First, Sec. 23. Sixth, Sec. 9. Eleventh, Sec. 6. Thirteenth, Sec. 16. Twentieth, Sec. 8 Twenty-Second, Sec. 5, Twenty-Third, Sec. 5.*

### **§3-103 PUBLIC ACCESS TO INFORMATION**

A. Except as expressly made confidential by law and by this Ordinance, the Board shall make all documents and records available to the public in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. §401 et seq., for inspection and copying including but not limited to the following:

1. All applications or other forms and documents submitted in support of any permit application;
2. All correspondence, into or out of the Board, and any attachments thereto;
3. Written comments received from any source regarding any application for a permit or any hearings or proceedings held pursuant to Section 3 or 4 of this Ordinance;
4. The transcripts of hearings, if made, tape recordings of hearings, if made, and the official, approved minutes of all Board meetings; and
5. All orders, permits, approvals, or other determinations.

B. The Town of Jay shall provide facilities for the inspection of such documents, records, correspondence and other information during reasonable hours. Persons wishing to copy papers and documents shall arrange to do so with the Board.

C. Copies of documents may be made at the following costs, as may reasonably be adjusted from time to time:

1. Copies shall be 50 cents per page;

Payment shall be made to the Town of Jay by cash, check or money order and shall be paid prior to the release of copies by the Board.

D. Except as expressly authorized by the Board, all Board files shall remain in the Jay Town Office.

*First, Sec. 24. Tenth, Sec. 11 and 12. Eleventh, Sec. 7.*

### §3-104 CONFIDENTIALITY

The Board shall keep confidential those documents which may remain confidential pursuant to the Maine Freedom of Access Law 1 M.R.S.A. Section 401 et seq. The Board shall also keep confidential information demonstrated by the person submitting it to be a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of that person and would make available information not otherwise publicly available. The Board shall make determinations of confidentiality and any person aggrieved by such determination may appeal to court in accordance with state law. The Board shall withhold disclosure of such information pending a final judicial determination on any claim of confidentiality.

*First, Sec. 25.*

### §3-105 BOARD DECISIONS

**A. Acceptable for Processing.** Except as provided in Chapter 5, Section 5-402(B), the Board shall, within 45 days of receipt of an application, notify the applicant in writing either that the application is acceptable for processing or, if the application is not acceptable for processing, the specific additional information needed to make an acceptable application.

**B. Requests for Further Information.** The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further information and data deemed necessary to evaluate the permit application. At any time during the review of an application for a permit, the Board or staff may request any additional information that is reasonably necessary to make any finding or determinations required by this Ordinance or any other provision of law.

**C. Public Hearing.** Except as provided in Chapter 5, Section 5-402, within 75 days after an application has been determined acceptable for processing, the Board shall notify the applicant in writing of the date, time and location of a public hearing, if the Board decides to hold one. The Board shall also provide public notice of the public hearing in a manner designed to inform interested and potentially interested persons.

If the Board decides to hold a public hearing, the hearing shall take place within 140 days of the date the Board mails written notice to the applicant that a permit application is acceptable for processing. All hearings shall be held and additional notice given in accordance with Section 3-107.

**D. Board Action.** Except as provided in Chapter 5, Section 5-403, within 45 days of the close of the public hearing, or any continuance hearing thereto, on a permit application, or within 120 days of acceptance of the application if no hearing is held, or within such other time limits as the Board may establish by order, either with the applicant's consent or for good cause after giving the applicant notice and an opportunity to be heard, the Board shall take any of the following actions:

1. Approve the application, without conditions other than the standard conditions specified in Section 3-110 and the standard conditions specified in Section 5-502, Section 9-404, Section 12-302 or Section 13-302, as applicable, and as approved by the Board, and set forth in writing its findings that the applicant has met each of the criteria of the appropriate chapter of this Ordinance;

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2. Approve the application, subject to the standard conditions in Section 3-112 and the standard conditions specified in Section 5-502, Section 9-404, Section 12-302, or Section 13-302, as applicable, and as approved by the Board, and subject to any other additional conditions necessary for the applicant to satisfy the requirements of this Ordinance, and set forth in writing its findings and the reasons for the imposition of these conditions;

3. Deny the application and set forth, in writing, its findings and reasons for its denial. The Board may deny an application for failure of the applicant to comply with the informational requirements of this Ordinance or if the information supplied is untrue or misleading.

Should the Board be evenly divided as to whether to approve or deny an application, such a vote shall have the effect of denying the application for failure to receive a majority in support.

**E. Written Decisions.** Every decision of the Board on an application shall be in writing and shall include findings of fact, conclusions of law, a plain statement of the appropriate rights of administrative and judicial review, and the time within which those rights must be exercised.

**F. Projects Requiring More Than One Application.** If an applicant applies to the Board for more than one application at any one time, the deadlines specified in this section for Board review and decisions on applications may be extended by the Board for reasonable cause for a reasonable period. The Board shall provide written notice to the applicant, intervenor(s) and the public of any such extension.

*First, Sec. 26, 27 and 28. Fifth, Sec. 6. Eleventh, Sec. 8. Thirteenth, Sec. 17.*

### **§3-106 ACTION PRIOR TO HEARING OR FINAL DECISION**

The following procedures may apply to any application pending before the Board.

**A. Procedure and Scheduling Orders.** In its discretion, the Board may issue scheduling orders governing all proceedings occurring between acceptance of the application for processing and decision by the Board. Such orders may but need not necessarily include provisions directing or authorizing:

1. presentation of evidence or argument by the applicant or by members of the public;
2. opportunities for the Board or staff to seek or provide amplification or clarification of any matter under consideration by the Board;
3. particular methods or formats for the submission of information such as pre-filed testimony or affidavit;
4. procedures for participation by members of the public that have a direct and substantial interest which may be affected by the proceedings including but not limited to adequate notice of the hearing or related Board deliberations, opportunities for discovery, and manner of presentation of evidence; and
5. such other mechanisms as may in the discretion of the Board facilitate orderly consideration of the issues presented during consideration of the application.

*Thirteenth, Sec. 18. Seventeenth, Sec. 26.*

### **§3-107 PUBLIC HEARINGS**

The following procedures shall apply to all public hearings held by the Board except enforcement hearings or proceedings which are governed by Chapter 4B.

**A. Requirement for Notice.** Unless otherwise specified in this Ordinance, prior to any hearing conducted by the Board the Board shall provide notice as follows:

1. To the applicant at least 10 days prior to the hearing date by certified mail, return receipt requested;
2. At least 10 days prior to the hearing by regular mail to persons who have filed a written request to be notified of hearings;
3. At least 10 days prior to the hearing to persons who have made timely requests to be notified of a specific hearing;
4. By publication twice in a newspaper of general circulation in the Town of Jay. The date of the first publication shall be at least 14 but no more than 21 days prior to the date of the hearing and the second publication shall be at least 7 but no more than 10 days prior to the date of the hearing; and
5. The Board may, by scheduling order, provide for additional notice.

For purposes of this Section, all notices shall be deemed to be delivered when deposited, postage prepaid, in the United States mail.

**B. Contents of Notice.** Notice of hearings shall contain the following minimum information:

1. Reference to the Ordinance authority under which the Board is acting;
2. The purpose of the hearing;
3. Time, date, and place of hearing;
4. The manner in which views may be submitted for consideration;
5. The place and time where relevant material may be examined prior to the hearing; and
6. The name, address and telephone number of the town official to contact for information.

**C. Amendment of Applications after Public Notice of Hearings Has Been Given.** After the first public notice of hearing, no amendment of any application shall be permitted except by order of the Board on motion of the applicant for good cause shown.

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1. In its discretion, the Board may reschedule the public hearing, conduct the public hearing as originally scheduled, or conduct the hearing as originally scheduled and direct or authorize other appropriate steps to assure that the public's opportunity to comment on the application as amended is preserved.
2. Following the determination of the Board pursuant to subsection 1, the applicant shall place a public notice in the same newspaper in which the original public notice appeared stating:
  - a. That the application has been changed, and the nature of the change; and
  - b. The information provided in the original notice pursuant to subsections B(3), (4), (5) and (6), amended as necessary.

### **D. Presiding Officer**

1. The presiding officer at all hearings shall be either (a) the Chairman of the Board, if present and willing to preside, or (b) a member of the Board selected by those members present at the hearing.
2. The presiding officer shall have the authority to:
  - a. Administer oaths;
  - b. Regulate the course of the hearing;
  - c. Rule upon issues of procedure;
  - d. Rule upon issues of evidence;
  - e. Hold conferences before or during the hearing for settlement or simplification of issues or procedure;
  - f. Regulate the placement of television cameras, still cameras, motion picture cameras or microphones at Board hearings in order that the use of such equipment does not interfere with the orderly conduct of the hearing;
  - g. In special cases, where good cause appears, permit deviation from the procedural rules insofar as compliance therewith is found to be impractical or unnecessary; and
  - h. Take such other action as may be necessary for the efficient and orderly conduct of the hearing, consistent with this Ordinance and applicable statutes.
3. The presiding officer may be overruled by a majority vote of the Board members present on any decision or ruling relating to a hearing.

### **E. General Conduct**

- 1. Opening statement.** The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

**2. Transcription of Testimony.** All testimony at hearings before the Board may be recorded and, as necessary, transcribed. The tape recordings and transcript of testimony, if made, shall constitute part of the hearing record.

**3. Witnesses.** Witnesses shall be sworn. Witnesses shall be required to state for the record their names, residence, business or professional affiliation, and whether or not they represent another individual, firm, association, organization, government agency or other legal entity, for purposes of the hearing. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Board in accordance with the provisions of this Ordinance.

**4. Testimony in Written Form.** At any time prior to or during the course of a hearing, the presiding officer may require that all or part of the testimony to be offered at such hearing be submitted in written form at such time and in such form as may be specified.

All persons offering testimony in written form shall be subject to questioning. This subsection shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing.

**5. Submission of Proposed Findings and Conditions.** All persons participating in any hearings shall have the right to submit to the Board in writing proposed findings of fact, briefs, and recommend conditions, providing that such documents shall be submitted in writing not later than seven (7) days after the close of the hearing or within such other time as ordered by the presiding officer or the Board. This subsection shall not apply to Board staff, consultants and counsel, all of whom shall have the right to submit such proposals at any time.

**6. Continuance.** All hearings conducted pursuant to this section may be continued for reasonable cause and reconvened from time to time and from place to place by the Board or presiding officer, as circumstances require. All orders for continuance shall specify the time and place at which such hearings shall be reconvened. The Board or presiding officer shall provide reasonable notice to any person at the hearing who so requests in writing and to the public of the time and place of such a reconvened hearing.

## **F. Public Participation**

**1. Members of the Public.** Any person including any person deemed by the Board to have a direct and substantial interest in the proceeding, may participate in a public hearing by making oral or written statements of such person's position on the issues, by introducing evidence and by submitting written or oral questions through the presiding officer, with such limits and on such terms and conditions as may be fixed by the Board or presiding officer.

**2. State, Federal and Municipal Agencies.** The presiding officer shall afford a representative of any interested federal, state, municipal or other governmental agency a reasonable opportunity to participate in such hearing and introduce evidence and question witnesses. Such representatives shall be permitted such rights as are granted by this section only if representing the views and position of the agency on whose behalf that representative appears and not personal views and opinions.

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**G. Oral Testimony.** The following procedures shall apply in those hearings in which oral testimony is to be received by the Board:

1. The order of witnesses shall be determined by the presiding officer with due regard to the time available, the number of witnesses to be heard, considerations of fairness and efficiency including redundancy, and matters of time and distance with respect to witnesses having travel constraints. Absent such considerations, the applicant should generally be permitted to present its witnesses before any other witnesses testify and in such order as the applicant considers most effective.
2. Board members, staff, counsel and consultants may be permitted by the presiding officer to ask questions of any witness at any time.
3. The applicant's representatives shall be given a reasonable opportunity, subject to the presiding officer's discretionary authority to schedule the Board's business, to question witnesses directly.
4. The Board may designate times during the hearing when representatives of federal, state or other governmental agencies, persons deemed to have a direct and substantial interest or members of the public may offer testimony and make statements, and may set time limits on such questions or statements.

*First, Sec. 29 and 30. Tenth, Sec. 13. Thirteenth, Sec. 19. Seventeenth, Sec. 27.*

### **§3-108 GENERAL EVIDENCE**

**A. Admissibility.** Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board.

**B. Official Notice.** The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and nonconfidential Board records. Facts officially noticed shall be included and indicated as such in the record.

**C. Official Record.** An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure.

**D. Objections.** All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

**E. Offer of Proof.** An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such

offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

*Seventeenth, Sec. 28.*

### **§3-109 DOCUMENTARY AND REAL EVIDENCE**

**A. Exhibits and Evidence.** All documents, materials and objects offered in evidence as exhibits, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

**B. Availability.** All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the Town Office during normal business hours.

**C. Record of Application.** In any proceeding involving an application, the application filed with the Board, including exhibits and amendments thereto, shall be placed into evidence.

*Thirteenth, Sec. 20. Seventeenth, Sec. 29.*

### **§3-110 THE RECORD AND BURDEN OF PROOF**

A. The record upon which any Board decision is to be made shall consist of the application, proposed findings of fact and conclusions, all documentary and real evidence properly submitted and received by the Board, all testimonial evidence whether pre-filed or delivered in person which has been admitted by the Board and, if prepared, the recording or transcript of the proceedings. The record shall remain open for other evidence or testimony for ten (10) days following the close of any public hearing unless otherwise provided by the Board, and if no public hearing is held, then according to Board scheduling order. Once the record has been formally closed, no further evidence of any kind may be placed in the record except by order of the Board and after appropriate notice is given.

B. An applicant for a new, renewed, modified or transferred permit shall have the burden of proof on all matters unless otherwise expressly provided by law or by this Ordinance. It shall be the applicant's burden to present sufficient admissible evidence to enable the Board to make each and every affirmative finding necessary under the Ordinance to enable the Board to take the action being sought by the applicant.

*Thirteenth, Sec. 26.*

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### §3-111 PROPOSED FINDINGS AND CONDITIONS

- A. By procedural order, the Board shall establish a date by which the applicant and any other person may submit in writing proposed findings of fact and recommended conditions supported by written explanation and argument but not by new evidence. If any person other than the applicant makes any submission, that person shall deliver a copy to the applicant.
- B. By procedural order, the Board shall establish a date by which the Board's staff, consultants and counsel shall file with the Board and serve upon the applicant a draft permit or proposed findings of fact and recommended conditions.
- C. By procedural order, the Board shall establish a reasonable opportunity for the applicant to submit comment or argument concerning any draft permit or proposed findings and conditions submitted by any person or the Board staff.
- D. The Board's deliberations with respect to any and all such draft permits or proposed findings and conditions shall be conducted in a meeting open to the public provided, however, that neither the applicant nor members of the public shall have any right to participate in the deliberation except as may be specifically permitted by the presiding officer.

*Thirteenth, Sec. 28.*

### §3-112 PERMIT CONDITIONS

The Board may impose any appropriate and reasonable conditions in any permit issued under this Ordinance in order to ensure compliance with the provisions of this Ordinance. In addition, and except as otherwise provided, every permit shall be subject to the following standard conditions:

- A. Inspection.** Employees and authorized representatives of the Board or the Town of Jay shall be allowed access to the facility which is the subject of a permit issued pursuant to this Ordinance during normal business or operating hours, and at such other times as the Board deems necessary, to inspect such facility, to examine records, to sample or monitor any substances or parameters at any location to assure compliance with this Ordinance and the terms of any permit issued pursuant to it.
- B. Modification.** A new or modified permit shall be required prior to the change or modification of any activity regulated by permit under this Ordinance.
- C. Compliance with Standards.** All applicable standards in State laws and regulations, Federal laws and regulations and this Ordinance shall be complied with.
- D. Record Keeping.**
  - 1. The permit holder shall maintain sufficient records to complete the application for any permit under this Ordinance and to record equipment malfunctions, failures, and downtime as well as any change or malfunction that would create above normal pollutant or contaminant emissions or solid waste disposal.

2. The permit holder shall for a period of six (6) years from the date of the sample, measurement or report, retain records of all monitoring information, including all calibration and maintenance records and all original recordings from continuous monitoring instrumentation, copies of all reports required by permit, and records of all data used to complete the application for a permit whether or not developed by the permit holder or an agent thereof.

3. Record keeping information shall be accessible at the permit holder's facility or otherwise readily available upon request of the Board.

**E. Time Limit for Construction.** Unless a chapter of this Ordinance provides otherwise, approval to conduct any activity subject to permit shall become invalid if such activity is not commenced within 18 months after receipt of such approval or if such activity is discontinued for a period of 18 months or more. The Board may extend such time period upon a satisfactory showing that an extension is justified.

**F. Monitoring.** The holders of all permits except for Jay Subdivision Permits shall be subject to the following monitoring conditions:

1. The Board shall be allowed to install equipment of its own at the facility which is the subject of a permit in order to monitor those activities which are the subject of the permit.

2. The permit holder shall monitor the activity regulated by permit under this Ordinance according to test procedures approved by this Ordinance and applicable federal and state law or regulations, unless other test procedures have been specified in the permit. Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the regulated activity over the sampling and reporting period.

3. Monitoring records shall include information on:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

**G. Reporting.** The holders of all permits except for Jay Subdivision Permits shall submit the following reports in addition to any reports specifically required by any permit:

**1. Quarterly Reports.** Unless otherwise specifically superseded by a permit condition, Quarterly reports shall be submitted to the Board by the end of the succeeding month following the end of each quarter:

First Quarter                      Jan.-Mar. Report Due April 30

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Second Quarter	Apr.-Jun. Report Due July 31
Third Quarter	Jul.-Sep. Report Due October 31
Fourth Quarter	Oct.-Dec. Report Due January 31

Quarterly Reports shall contain:

- a. the results of all monitoring of emissions and discharges required by a permit during the previous quarter;
- b. description and quantification of all unpermitted or excessive emissions or discharges not in compliance with a permit including all non-compliance notifications made to the Town during that quarter;
- c. description of any occurrences of any other kind which did or may have constituted noncompliance with any permit conditions during that quarter;
- d. detailed analysis of the causes of all emissions, discharges and occurrences identified in response to subparagraphs b and c above and detailed description of all steps taken or planned to be taken to reduce or prevent emissions, discharges and occurrences reported in subparagraphs b and c above;
- e. results and analysis of any stack testing or other testing of emissions and discharges regulated by a permit during that quarter;
- f. compliance assurance reports and compliance certification as required by Chapter 13, Part 8.

**2. Annual Reports.** For each calendar year, a report shall be submitted to the Board by January 31 of the next year containing the following information:

- a. Summary description of all studies, reports, projects, programs or other measures employed to meet permit requirements and year-long trends in emissions and discharges regulated by the permit; and
- b. Copies of all Air Emission Statements, Toxic Use Reduction reports and Toxic Chemical Release Inventory reports as they are filed with relevant state and federal agencies during the year.

**3. Additional Samples.**

- a. The permit holder shall analyze any additional samples as may be reasonably required by the Board to ensure quality control of the samples necessary for meeting permit conditions.
- b. If the permit holder monitors any discharge or emission characteristics set forth in the permit more frequently than required, the results of such monitoring shall be included in the quarterly reports.

**4.** On an individual or case-by-case basis, for good cause, the Board may order alternate or additional reporting requirements.

**5. Reports of Federal or State Violations.** Every permit holder shall report to the Board in writing, within ten (10) days of receipt, any citations or notices of violation of federal or state environmental permits, approvals or licenses, including renewals, modifications or extensions thereto.

**6. Short-term Noncompliance Reporting.** For all Jay Air Emission Permit holders and Water Permit holders, short-term noncompliance reporting shall be in accordance with the procedures set forth in Chapter 12, Section 12-204 and Chapter 13, Section 13-205. In the event any other permit holder is unable to comply with any of the conditions of this Ordinance, the permit holder shall immediately notify the Board or the Code Enforcement Officer by telephone with the following information and follow-up in writing within 48 hours after commencement of such non-compliance:

- a. Description and quantification of the noncompliance and its cause;
- b. Period of noncompliance, including exact date and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

All permit holders shall notify the Board or the Code Enforcement Officer by telephone in the case of an emergency or in advance of any planned changes in activity which may result in noncompliance with the terms and conditions of any permit issued pursuant to this Ordinance.

Notwithstanding any requirement of this subsection, the noncompliance reporting provisions specifically set forth in the permit shall control.

**H. Assignment or Transfer of Permits.** Every permit issued by the Board is nontransferable unless written consent is obtained from the Board. Except as provided in Section 9-503(B), written consent must be applied for no later than two (2) weeks subsequent to any transfer or assignment of property which is subject to a permit. Any proposed transferee or assignee shall demonstrate to the satisfaction of the Board its technical and financial capacity and intent to: (1) comply with all conditions of the applicable permit; and (2) to satisfy all applicable criteria of this Ordinance. The permit holder and proposed transferee or assignee shall be jointly and severally liable for violation of this subsection.

**I. Signatory Requirement.** All applications, petitions, reports and other papers submitted to the Board shall be signed by the party, or its duly authorized officer or agent, and shall include the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I authorize the Board and Code Enforcement Officer to enter the property that is the subject of this document, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware there are significant penalties for submitting false

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information, including the possibility of fine and imprisonment. I also certify that I am duly authorized by the Applicant to execute this document and that the document is a valid and binding document of the Applicant.”

Upon becoming aware that he or she submitted incorrect information or failed to submit relevant facts, the responsible officer or employee must provide the Board with supplementary facts or corrected information.

*First, Sec. 31 and 32. Tenth, Sec. 14. Eleventh, Sec. 9. (formerly §3-110) Thirteenth, Sec. 21, 22, 23, 24, and 25. Fourteenth, Sec. 8 and 9. Seventeenth, Sec. 30 and 31. Eighteenth, Sec. 6, 7 and 8. Twenty-Second, Sec. 7, Twenty-Third, Sec.6.*

### **§3-113 APPEALS**

Any person aggrieved by a final decision of the Board on a permit application or a petition to amend or modify a Jay permit may seek judicial review thereof in accordance with Subsection B. A decision of the Board to grant or deny a permit application or a petition to amend or modify a Jay permit shall not be considered final for purposes of this section until the Board has taken final action on a petition for reconsideration under subsection A.

**A. Petition for Reconsideration.** Within (30) days of receipt of notice of the decision of the Board on a permit application or a petition to amend or modify a Jay permit, an applicant, permit holder, or any person aggrieved by the decision may petition the Board in writing for reconsideration of the decision. A Board member who voted on the prevailing side of the decision may move to reconsider at any time within such 30 day period.

The petition shall identify the findings, conclusions or conditions objected to or believed to be in error, the basis of the objections or challenge, the nature of the relief requested and the nature of any new or additional evidence to be offered. Filing a petition for reconsideration is a prerequisite to filing a request for judicial review pursuant to subsection B of this section. Any person aggrieved must properly raise all issues in the petition for reconsideration. Any issues not so raised are deemed waived. Any person aggrieved by a final decision of the Board may only petition the Board for reconsideration of the decision once.

The Board shall, within 30 days of receipt of such a petition, commence its review of such petition and determine whether or not to hold a public hearing. Any public hearing shall be held within 60 days of receipt of the petition in accordance with the procedures specified in Section 3-107. Within 90 days of receipt of the petition, the Board shall approve, approve with conditions or deny the petition in full or in part. Should the Board be evenly divided as to whether to approve or deny the petition, such a vote shall have the effect of denying the application. The Board shall promptly provide written notice of its decision on reconsideration to the person who petitioned for reconsideration, to the applicant and all other parties, and shall promptly publish its decision in a newspaper of general circulation in the Town of Jay. The Board's decision on a petition for reconsideration shall constitute its final decision.

In accordance with Subsection B, the petitioner shall have 30 days from receipt of notice of the Board's decision on reconsideration to appeal to Court the Board's final decision on the petition for reconsideration.

**B. Judicial Appeal.** Any person aggrieved by a final decision of the Board may seek judicial review in accordance with state law within 30 days from receipt of the notice of decision.

*First, Sec. 33 and 34. Tenth, Sec. 15. (formerly §3-111) Thirteenth, Sec. 27. Fourteenth, Sec. 10.*

### **§3-114 ADVISORY RULINGS**

The Board may, in its sole discretion, issue advisory rulings at the request of any applicant, permit holder, Code Enforcement Officer or upon its own motion, concerning the applicability of this Ordinance to any activity or clarifying, but not modifying or amending, any permit issued under this Ordinance.

Requests for advisory rulings shall be submitted to the Board in writing. The Board may, in its sole discretion, conduct a hearing and may, in its sole discretion, issue an advisory ruling to the person requesting such ruling or reject such person's application for an advisory ruling within 120 days of the Board's receipt of such request.

An advisory ruling shall not be binding on the Board provided that, in any subsequent enforcement proceeding initiated by the Board, any person's justifiable reliance upon the ruling shall be considered in mitigation of any penalty sought to be assessed.

*Thirteenth Sec. 29. Seventeenth, Sec. 32.*

### **§3-115 ENVIRONMENTAL RESERVE FUND AND FEES**

#### **A. Environmental Reserve Fund**

The Environmental Reserve Fund is hereby established. The purpose of the Environmental Reserve Fund is to promote all the purposes, policies and objectives of this Ordinance as expressed therein. All fees required to be paid to the Town of Jay for Permits issued pursuant to this Ordinance, and all other sums of money paid to or given to the Town of Jay pursuant to this Ordinance including, without limitation, all fines and penalties shall be credited to the Environmental Reserve Fund and only the expenditures authorized by this Ordinance shall be charged to the Environmental Reserve Fund.

Money in the Environmental Reserve Fund shall be deposited, invested and administered by the Selectmen and the Treasurer of the Town of Jay and may be invested as provided by Maine law. Interest on the investments shall be credited to the Environmental Reserve Fund.

The Selectmen may receive, apply for, or accept, on behalf of the Town, funds, grants, bequeaths, gifts or contributions from any Person. All such funds shall be deposited in the Environmental Reserve Fund.

The Selectmen shall be the trustees of the Environmental Reserve Fund and the Environmental Reserve Fund, unless otherwise provided in this Ordinance, shall be subject to 30-A M.R.S.A. §5802, as amended from time to time.

If on June 30 of any year, the Net Balance in the Environmental Reserve Fund is equal to or greater than \$800,000, then the Annual Fees for the next year shall not be due and payable. After a one

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year suspension of the Annual Fees, the Annual Fees shall then become due and payable the next year. This paragraph shall be invoked in any year when the criterion herein established has been met. The Net Balance in the Environmental Reserve Fund shall be calculated by subtracting from the total amount of money in the Environmental Reserve Fund all the sums that are then due and payable or those actual expenses that have been incurred.

### **B. Annual Fees**

Permit Holders of a Jay Air Emissions Permit, a Jay Water Permit, or a Jay Solid Waste Facility Permit (including a Schedule of Compliance as amended from time to time) shall pay to the Town of Jay an Annual Fee as follows:

#### 1. Jay Air Emissions Permit

The Annual Fee for a Jay Air Emissions Permit shall be the sum of the applicable Base Fee Per Year and the Per Ton Fee Per Year of all permitted air pollutants as follows:

Annual permitted emissions in tons	Base Fee Per Year
1-1,000	\$15,000
1,001-4,000	25,000
over 4,001	35,000

The Per Ton Fee Per Year for all permitted air pollutants shall be \$4.00 per ton.

The permitted air pollutants include, but are not limited to: PM, SO<sub>2</sub>, NO<sub>x</sub>, CO, VOC, H<sub>2</sub>SO<sub>4</sub>, lead, and TRS.

#### 2. Jay Water Permit

The Annual Fee for Jay Water Permit shall be the sum of the Base Fee and the Fee per million gallons per day (“MGD”) of permitted flow as follows:

Base Fee: \$5,000.00

Fee for MGD: \$400.00 times the permitted flow in MGD

The first million gallons per day of permitted flow is exempt from the Annual Fee

#### 3. Jay Solid Waste Facility Permit (including Schedule of Compliance as amended from time to time)

The Annual Fee for Jay Solid Waste Facility Permit (including Schedule of Compliance as amended from time to time) shall be \$35,000.00.

These Annual Fees have been based upon the Town's best estimate of the actual costs necessary for the Town to administer and enforce this Ordinance. All Annual Fees shall be credited to the Environmental Reserve Fund. The Annual Fees shall be due and payable to the Town of Jay on January 3, 2001 and each year thereafter on the same day; provided however, if the 3<sup>rd</sup> falls on a Saturday or Sunday, then the payment is due on the next Monday.

By December 1 of each year, the Code Enforcement Officer shall bill each Permit Holder the amount due for its Annual Fee. Failure to pay the Annual Fee shall be deemed a violation of this Ordinance and a Violation of the Permit.

Failure to pay any Annual Fee as provided in this Ordinance is sufficient grounds for revocation of a Permit. There are no additional fees assessed for renewals or amendments. Any Schedule of Compliance entered into on or after January 3, 2001 shall provide for an Annual Fee.

**C. Expenditures**

The Selectmen may authorize expenditures from the Environmental Reserve Fund. Such expenditures shall be all expenditures for the implementation, administration and enforcement of this Ordinance. Such allowable expenditures may include, but not be limited to, personnel or payroll expenses and benefits, including but not limited to, Code Enforcement Officer, Deputy Code Enforcement Officer, clerks and other staff, expenses relating to Planning Board including payroll, expenses relating to any pre-permit activities such as application reviews, public hearings and appeals, the actual Permit processing activities and associated post-permit compliance activities required to assure continued Permit compliance, expenses relating to telephone, training, travel, supplies, monitoring, sampling and computer supplies and services, expenses related to enforcement activities as a result of Permit noncompliance, expenses related to the retention of lawyers or legal services, the retention or contracts with consultants including engineers, scientists, and inspectors, reasonable capital expenditures for specific equipment to carry out the objectives of this Ordinance, or any other expenditure for costs which are related to carrying out the objectives of this Ordinance.

**D. Application Fee and Filing Fee**

The following Application Fee and Filing Fee shall be assessed against all applicants for a Permit with the exception of a Permit Holder who has a Jay Air Emissions Permit, a Jay Water Permit, or a Jay Solid Waste Facility Permit (including Schedule of Compliance as amended from time to time) and with the exception of those seeking a Jay Subdivision Permit governed by Chapter 5:

1. **Filing Fee.** A Filing Fee of One Thousand Dollars (\$1,000.00) shall be paid at the time a Permit application is filed. Failure to pay the required fee at the time of filing will result in the application being returned to the applicant.
2. **Application Fee.** Fees for direct costs including, but not limited to, legal, engineering and other professional fees and other costs specifically accountable to a Permit as follows:
  - (a) An Application Fee for all direct costs incurred in reviewing Permit application and other submittals relating to a Permit; and

## CHAPTER 3

- (b) All costs relating to the preparation of information and materials for the Board associated with the Permit application.
3. **Fee Processing.** The Board shall bill the applicant monthly for any Application Fee. The applicant shall pay the bills to the designated recipient within 30 days. If any applicant withdraws its application, the applicant remains liable for all direct costs incurred to the date of withdrawal. Upon failure to pay the Application Fee when due, the Board and the Code Enforcement Officer may cease its activity regarding the application, may take enforcement action pursuant to Chapter 4B to recover the Application Fee and may take appropriate enforcement action pursuant to Chapter 4B. Final payment of the Application Fee shall occur before issuance of the Permit.
4. **Fee Administration.** The Code Enforcement Officer shall be responsible for fee administration and shall review bills submitted by vendors prior to directing bills to an applicant. Any applicant may request that the Code Enforcement Officer establish an estimated non-binding budget for any Permit application. If the Code Enforcement Officer establishes such a budget, and if it appears that the budget will be exceeded, the Code Enforcement Officer shall notify the applicant with that information and shall provide an opportunity to discuss a revised budget.

*First, Sec. 35. Sixth, Sec. 10. Eleventh, Sec. 10. (formerly §3-113) Thirteenth, Sec. 30. Seventeenth, Sec. 33. Eighteenth, Sec. 9. Twentieth, Sec. 9. Twenty-First, Sec. 7, Twenty-Third, Sec. 7.*

### §3-116 FORMS

All applications, motions, proposed findings, documents, petitions, briefs, complaints, responses to complaints and, to the extent practicable, written testimony filed with the Board, (all hereinafter referred to as “form”), except for documents not susceptible of reproduction in the manner provided or for other good cause shown, shall be typewritten or printed on white opaque paper 8 1/2 by 11 inches in size and bound; typed matter shall be double spaced. The first page of each such form shall be headed by the title:

State of Maine  
Town of Jay Planning Board

and shall have a caption with (1) the title of the matter, giving the name of the applicant, the activity in issue and the location (e.g., In the Matter of ABC Inc., Jay, Maine); (2) the Board's application number (e.g., Jay Water Permit Application #86); and (3) the title of the form (e.g., Petition to Intervene).

The final page of the form shall be dated and signed by the applicant, permit holder, respondent or his attorney or representative. Such signature shall constitute a certification by such person that he has personally examined and is familiar with the form, that based on his inquiry of those persons immediately responsible for obtaining information on the form, and to the best of his knowledge and information he believes the information is true, accurate and complete, and that it is not interposed for delay. If a form is not signed or is signed with intent to defeat this section, it may be stricken as false and the action may proceed as though the form had not been served and filed.

*First, Sec. 36. Tenth, Sec. 16. (formerly §3-114) Thirteenth, Sec. 31.*

**§3-117 SERVICE AND FILING OF DOCUMENTS**

**A. Service.** A copy of every application, motion, petition, brief, or paper relating to discovery and other document permitted or required to be filed with the Board pursuant to this Ordinance shall be mailed to all parties in the proceeding or their representatives by ordinary mail unless otherwise provided in this Ordinance.

Any notice required to be given or document filed or served under this Ordinance shall be deemed delivered when deposited in the United States mail, postage prepaid except as otherwise specified.

**B. Filing.** An original and four (4) copies of all such applications, motions, petitions, briefs, complaints, responses to complaints, plans, study proposals, reports and other required submissions shall be filed with the Board by delivery to the Town Office, 340 Main Street, Jay, Maine, 04239 by 4:00 p.m. local time on or before the day the submission is due unless otherwise specified in a Board order. The Board may order additional copies of particular documents to be filed.

**C. Representatives.** The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made and to whom all correspondence from the Board and staff may be sent.

**D. Service of Papers by the Board.** For purposes of this Ordinance, the Board shall assure that all orders, decisions, notices and other papers issued by the Board are served within seven (7) days of issuance upon all parties to the proceeding by ordinary mail, hand delivery or by private express courier except for subpoenas or unless otherwise provided by this Ordinance, and provided that a Board decision on an application pursuant to Section 3-105(D) and on a petition for reconsideration pursuant to Section 3-113(A) shall be served upon the applicant and intervenors by certified mail, return receipt requested, by hand delivery or by private express courier.

**E. Facsimile and Electronic Mail Not Accepted.** The Board shall not accept facsimile or electronic mail as a substitute for filing of an original document. The Board will accept facsimile for 48 hour or less incident reports.

*Eighth, Sec. 2. Tenth, Sec. 17. (formerly §3-115) Thirteenth, Sec. 32. Seventeenth, Sec. 34 and 35, Twenty-Third, Sec. 8.*

**§3-118 COMPUTATION AND ENLARGEMENT OF TIME**

In computing any period of time provided by this Ordinance, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

When, by this Ordinance or by order of the Board, an act is required to be done at or within a specified time, the Board may within its discretion at any time order the period enlarged for a reasonable period for good cause shown.

*(formerly §3-116) Thirteenth, Sec. 33.*

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### **§3-119 ORDERS AND DECISIONS EFFECTIVE**

Orders, decisions, notices and other papers issued by the Board shall be effective upon the presiding officer, or other duly authorized Board member, signing the written order, decision, notice or paper issued by the Board.

*Tenth, Sec. 18. (formerly §3-117) Thirteenth, Sec. 34.*

### **§3-120 REVOCATION, MODIFICATION OR SUSPENSION OF PERMITS**

Any person, including the Code Enforcement Officer, may petition the Board to revoke, modify or suspend a permit. The petition must be addressed to the Board and must state which of the criteria listed below is being invoked. It must specifically describe the factual basis for the petition and generally describe and summarize what evidence will be offered to support the petition. The petition, once filed, may be supplemented only as permitted by the Board. The petitioner must serve a copy of the petition on the permit holder at the time the petition is filed with the Board.

No later than 30 days following the filing of a petition to revoke, modify or suspend, and after providing the petitioner and the permit holder opportunity to comment, the Board shall issue an order specifying the schedule and procedure for Board consideration of the petition. The Board shall utilize the administrative procedures set forth in this Chapter as appropriate. If the Board determines that a petition on its face does not warrant further consideration, the Board may dismiss it. After a hearing, the Board may deny the petition or modify in whole or in part any permit, issue an order prescribing necessary corrective action, or revoke or suspend a permit when the Board finds that:

- A. The permit holder has violated any condition of the permit, Board order or this Ordinance;
- B. The permit holder has obtained a permit by misrepresenting or failing to disclose fully all relevant facts;
- C. The permitted activity poses a threat to human health or the environment;
- D. The permit fails to include any standard or limitation legally required on the date of issuance;
- E. Modification or amendment of a permit is necessary to ensure compliance with applicable standards, limits or requirements; or
- F. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the permit.

*Seventeenth, Sec. 36. Eighteenth, Sec. 10 and 11.*

# CHAPTER 4A

*Chapter 4, as enacted on May 21, 1988 and as amended by First, Sixth, Eighth, Tenth, and Eleventh Ordinances, repealed and replaced by Thirteenth Ordinance, Sec. 35.*

## PERMIT ADMINISTRATION AND INVESTIGATIONS

### Section

§4A-101 Permit Administration

§4A-102 Investigations

§4A-103 Emergencies

### §4A-101 PERMIT ADMINISTRATION

**A. General.** The Code Enforcement Officer shall generally oversee the administration of all permits issued by the Board.

**B. Compliance Facilitation.** Whenever it appears to the Code Enforcement Officer that there is or may be any irregularity in the administration of, or compliance with, any permit issued by the Board, the Code Enforcement Officer may contact the permittee and may attempt to secure satisfactory permit administration and compliance. The Code Enforcement Officer is authorized, but not required, to meet at reasonable times and places with representatives of the permittee to discuss issues or problems relating to administration of, or compliance with, any permit. Notwithstanding any effort undertaken by the Code Enforcement Officer pursuant to this section, responsibility for compliance with the permittee's obligations under any permit remains with the permittee.

**C. Compliance Order.** Whenever the Code Enforcement Officer is informed and believes that any permittee is operating out of compliance with any permit issued by the Board, the Code Enforcement Officer may issue a compliance order directing the permittee to do or not to do whatever the Code Enforcement Officer reasonably believes to be necessary to assure compliance with a permit. On receipt of any compliance Order, the permittee shall within (3) days advise the Code Enforcement Officer in writing whether it acquiesces to the compliance order or whether it will seek review by the Board.

**D. Board Review.** Whenever a permittee applies for Board review of a compliance order, the Board shall at its next regularly scheduled meeting, except in the case of emergencies, conduct an informal hearing and the Board may either affirm, modify or revoke the compliance order on the basis of that hearing.

**E. Report to Board.** From time to time, the Code Enforcement Officer may brief the Board with respect to any issues of permit administration or compliance including any activities of the Code Enforcement Officer or any permittee under any subsection hereof.

**F. Other Proceedings.** The provisions of this section are supplemental to, and independent from, all other provisions of Chapter 4A and Chapter 4B. Nothing said or done by or on behalf of the Code

## CHAPTER 4A

Enforcement Officer in implementation of this section shall preclude investigation or enforcement under other provisions of this Ordinance. Nothing said or done by any permit holder in response to any initiative by the Code Enforcement Officer under this section shall constitute an admission of non-compliance. Full compliance by a permit holder with the express terms of a compliance order is a defense in any enforcement proceeding but only to the extent that the enforcement complaint directly relates to the specific subject matter of the compliance order. In the penalty phase of any enforcement proceeding under Chapter 4B, evidence of the permit holder's conduct under this section may be offered as grounds for either mitigation or enhancement of any penalty otherwise applicable.

*Fourteenth, Sec. 11. Seventeenth, Sec. 37.*

### **§4A-102 INVESTIGATIONS**

A. The Code Enforcement Officer may at any time conduct an investigation., On receipt of a written complaint signed by ten or more persons residing or conducting business in the Town of Jay, and alleging violation of this Ordinance or violation of any permit, approval or order of the Board, the allegations of the complaint shall be investigated by the Code Enforcement Officer.

B. In all cases not within the provisions of Section 4A-103, the investigation shall be conducted in a reasonably expeditious manner.

C. After an investigation under this section has been completed, the Code Enforcement Officer shall report to the Environmental Enforcement Counsel. The Environmental Enforcement Counsel may commence an enforcement proceeding in accordance with the provisions of Chapter 4B of this Ordinance. If the Environmental Enforcement Counsel determines that commencement of an enforcement proceeding is inappropriate or inadvisable, the Environmental Enforcement Counsel shall so report to the Board and the report of investigation conducted by the Code Enforcement Officer shall be placed on file and the matter shall be considered closed without prejudice.

*Fourteenth, Sec. 12.*

### **§4A-103 EMERGENCIES**

Whenever it appears to the Board, or to the Code Enforcement Officer, that there is or may be an ongoing violation of any provision of this Ordinance or of the terms or conditions of any permit, approval or order of the Board which is creating or is likely to create a substantial and immediate danger to public health, welfare or safety or significant environmental harm, the Board or the Code Enforcement Officer may in accordance with this subsection order the person or persons causing or contributing to such hazard to take such immediate actions as are necessary to reduce or alleviate the danger. Service of a copy of the order issued under this emergency procedure shall be made by Sheriff, Deputy Sheriff, constable, or Jay Police Officer to the person to whom the order is directed. In the event such persons are so numerous that the specified method of service is a practical impossibility or the Board or Code Enforcement Officer cannot identify the person or persons causing or contributing to such hazard, the Board or Code Enforcement Officer, to the extent practicable, shall make the order known by publication of such order for a reasonable period in a newspaper of general circulation in the Town of Jay or shall publicize such order on radio or television for a reasonable period. Before issuing such order, the Board or Code Enforcement Officer may consult and coordinate with appropriate state agencies in responding to the emergency.

Each person to whom such order is directed shall comply with it immediately. Any such person may apply to the Board for a hearing on such order within 48 hours of receipt of the order. The hearing shall be held by the Board within five (5) days of service of the request for hearing. Such hearing shall be conducted in accordance with Section 4B-107 of this Ordinance to the extent possible under the circumstances, but to the extent that the circumstances require expedited action the presiding officer may apply such procedural rules as required by the circumstances and he shall clearly state such procedures at the start of the proceeding. Within seven (7) days after such hearing, the Board shall make findings of fact and continue, revoke or modify the order. The findings of fact and order shall be served as specified above in this subsection. The decision of the Board shall be considered final Board action which may be appealed in accordance with Section 4B-110. This subsection is additional to and independent of any and all other remedies that might otherwise be available at law or in equity.



# CHAPTER 4B

*Chapter 4, as enacted on May 21, 1988 and as amended by First, Sixth, Eighth, Tenth, and Eleventh Ordinances, repealed and replaced by Thirteenth Ordinance, Sec. 35.*

## **ENFORCEMENT**

### Section

- §4B-101 Powers and Duties of Environmental Enforcement Counsel
- §4B-102 Commencement of Enforcement Proceedings
- §4B-103 Response to Complaint
- §4B-104 Default Order
- §4B-105 Board Decision
- §4B-106 Prehearing Conference
- §4B-107 Enforcement Hearings
- §4B-108 Enforcement Orders
- §4B-109 Penalties
- §4B-110 Judicial Review
- §4B-111 Stay
- §4B-112 Nuisance
- §4B-113 Judicial Enforcement

## **§4B-101 POWERS AND DUTIES OF ENVIRONMENTAL ENFORCEMENT COUNSEL**

**A. Appointment.** The Environmental Enforcement Counsel shall be appointed by the Board of Selectmen.

**B. Duties.** The Environmental Enforcement Counsel shall investigate potential violations of the Ordinance referred by the Board or Code Enforcement Officer, report to the Board when appropriate and commence and maintain enforcement proceedings.

*Seventeenth, Sec. 38 and 39.*

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### §4B-102 COMMENCEMENT OF ENFORCEMENT PROCEEDINGS

**A. Commencement of Proceedings.** The Environmental Enforcement Counsel shall commence an enforcement proceeding by filing and serving a complaint upon the alleged violator (herein called “Respondent”).

**B. Complaint: Form and Content.** Each complaint for the assessment of a penalty and/or for the suspension, revocation or modification of a permit shall include:

1. A statement reciting the section(s) of the Ordinance authorizing the issuance of the complaint;
2. A specific reference to each provision of the Ordinance or any applicable permit which Respondent is alleged to have violated or to other legal grounds for the complaint;
3. A concise statement of the factual basis for the alleged violation;
4. Either a demand for specific penalties or forms of relief authorized by this Ordinance or a statement that the complaint seeks whatever outcome may be appropriate under the circumstances; and
5. Notice of Respondent's rights to (a) admit to the violation, consent to the penalty or other action specified in the complaint; or (b) admit to the violation, but request a hearing before the Board to contest the penalty or other action sought in the complaint; or (c) deny the alleged violation.

**C. Copy of Ordinance.** A copy of the enforcement provisions of this Ordinance shall be served with the complaint.

**D. Service.** A complaint under this section shall be served upon the Respondent by certified mail, return receipt requested, or by Sheriff, Deputy Sheriff, constable or Jay Police Officer. If service is by certified mail, the return receipt, properly endorsed and postmarked shall be prima facie evidence of the completion and date of such service. If service is made in hand the Maine Rules of Civil Procedure shall apply to the making of such service and proof thereof.

*Seventeenth, Sec. 40.*

### §4B-103 RESPONSE TO COMPLAINT

The Respondent shall file and serve upon the Environmental Enforcement Counsel a written response to the complaint within twenty (20) days following service of the complaint:

- A. If Respondent admits to all of the allegations contained in the complaint and consents to the penalty or other action requested in the complaint, the response shall unequivocally and unambiguously so state;
- B. If Respondent admits to the violation as alleged in the complaint, but contests either the amount of the penalty or the terms of any other action sought in the complaint or both, the response shall

expressly admit the allegations and specifically state all of the factual and legal circumstances which Respondent contends support a different disposition; and

C. In all other instances, the response shall specifically and clearly admit or deny each of the factual allegations in the complaint or state clearly that Respondent lacks knowledge or information sufficient to form a belief as to the truth of any allegation, which allegation shall be deemed to have been denied. Each and every allegation not specifically addressed in the response shall be deemed to have been admitted. The response shall also state all factual or legal matters upon which Respondent bases any defense or affirmative defense and identify any additional factual or legal issues which Respondent intends to place at issue in the proceeding.

*Seventeenth, Sec. 41.*

## §4B-104 DEFAULT ORDER

**A. Default.** A Respondent may be found to be in default by the presiding officer: (1) after motion, upon failure to file a timely response to the complaint; (2) after motion or *sua sponte*, upon failure to comply with a prehearing or hearing order of the presiding officer; or (3) after motion or *sua sponte*, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the Respondent unless the Complainant presents sufficient evidence to the presiding officer to establish a prima facie case against the Respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by Respondent constitutes, for purposes of the pending enforcement action only, an admission of all facts alleged in the complaint and a waiver of Respondent's right to a hearing on such factual allegations. Default by the Complainant shall result in the dismissal of the complaint with prejudice.

**B. Procedures Upon Default.** Upon finding that default has occurred, the presiding officer shall issue a default order against the defaulting party.

**C. Contents of a Default Order.** A default order shall include findings of facts showing the grounds for the order, conclusions regarding all material issues of law or discretion, the penalty to be assessed and/or the terms and conditions of permit revocation, suspension or modification as appropriate.

**D. Relief From Default.** For good cause shown, the presiding officer, as appropriate, may set aside a default order.

## §4B-105 BOARD DECISION

After receipt of Respondent's response to the complaint or after the deadline for receipt of such response, the Board may take any of the following actions:

A. In the event that the Respondent admits to the violation and agrees to any monetary penalty and/or the terms and conditions of the revocation, suspension or modification recommended in the complaint by the Environmental Enforcement Counsel, the Board will ratify or disapprove those sanctions. In the event that the Board fails to take any action within (30) days of receipt of Respondent's answer, the sanctions recommended in the complaint by the Environmental

## CHAPTER 4B

Enforcement Counsel will be deemed acceptable to the Board and any monetary penalty will be due and payable by the Respondent within 30 days;

B. In the event the Respondent admits to the violation set forth in the complaint, but contends that the amount of the monetary penalty and /or the terms and conditions of the suspension, revocation or modification recommended by the Environmental Enforcement Counsel are inappropriate, or in the event the complaint does not seek specific monetary penalties or other specific sanctions but Respondent does not contest the allegations, the Board will conduct a hearing limited to the amount of the monetary penalty and/or the terms of the revocation, suspension or modification. The Board will determine the amount of the monetary penalty and/or the terms and conditions of the suspension, revocation or modification;

C. In the event the Respondent denies that a violation occurred, the Board will decide whether to dismiss the enforcement action or to proceed with a hearing;

D. In the event the presiding officer has found the Respondent to be in default as set forth in §4B-104, the Board may enter a final order pursuant to §4B-108; or

E. The Board may institute judicial proceedings in accordance with §4B-113 of this Chapter.

*Fourteenth, Sec. 13*

### §4B-106 PREHEARING CONFERENCE

**A. Purpose of Prehearing Conference.** Unless the conference appears unnecessary, the presiding officer, at any time before an enforcement hearing begins, shall direct the Environmental Enforcement Counsel and the Respondent, either personally or through a representative, to appear at a conference to consider: (1) the simplification of facts not in dispute; (2) the exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will void unnecessary proof; (3) the limitation of the number of expert or other witnesses; (4) setting a time and place for the hearing; and (5) any other matters which may expedite the disposition of the proceeding.

**B. Exchange of Witness Lists and Documents.** Unless otherwise ordered by the presiding officer, the Environmental Enforcement Counsel and Respondent shall exchange (1) the names of the expert and other witnesses each intends to call, together with a brief narrative summary of their expected testimony; and (2) copies of all documents and exhibits to be offered as evidence. Documents and exhibits shall be marked for identification as ordered by the presiding officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify at the enforcement hearing without permission of the presiding officer.

**C. Record of the Prehearing Conference.** No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the presiding officer upon motion of a party or *sua sponte*. The presiding officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements and all rulings and appropriate orders.

**D. Unavailability of a Prehearing Conference.** If a prehearing conference is unnecessary or impracticable, the presiding officer, on motion or *sua sponte*, may direct other arrangements to accomplish any of the objectives set forth in this section.

## §4B-107 ENFORCEMENT HEARINGS

This section shall apply to all hearings which may result in the modification, suspension or revocation of any permit, approval or order or the imposition of a monetary penalty whenever such hearings are based upon the alleged violation of any provisions of this Ordinance or the terms or conditions of any permits, approvals or orders issued by the Board pursuant to this Ordinance.

### A. Duties and Responsibilities of the Presiding Officer

1. The presiding officer at all hearings shall be either (a) the Chairman of the Board, if present and willing to preside, or (b) a member of the Board selected by those members present at the hearing.
2. The presiding officer shall have the authority to:
  - a. Hold a conference for the simplification of issues;
  - b. Issue subpoenas requested by the parties;
  - c. Place witnesses under oath;
  - d. Take action necessary to maintain order;
  - e. Rule on motions and procedural questions arising before and during the hearing;
  - f. Call recesses or adjourn the hearing; and
  - g. Prescribe and enforce general rules of conduct and decorum.

**B. Role of Board Members.** The Board Members, including the presiding officer, collectively shall be responsible for reviewing evidence and hearing testimony and argument in order to determine the appropriate disposition of the complaint.

**C. Role of Code Enforcement Officer and Advisory Staff to the Board.** The Code Enforcement Officer shall advise the Board when requested with regard to documentary evidence produced and testimonial evidence heard at the enforcement hearing. The Code Enforcement Officer will not act as an advocate at the hearing. However, the Code Enforcement Officer may be called as a witness by the Environmental Enforcement Counsel or the Respondent if necessary. The Board may also retain legal counsel or expert witnesses as it deems necessary.

**D. Ex parte Communications Prohibited.** Throughout any enforcement proceeding:

1. No presiding officer, Board Member or Advisory Staff Member in a proceeding shall communicate, directly or indirectly, in connection with any issue relating to the merits with either the Environmental Enforcement Counsel or Respondent, or any other person legally

## CHAPTER 4B

interested in the outcome of the proceedings except upon notice and opportunity for all parties to participate pursuant to order of the presiding officer.

2. Nothing in this section prohibits inquiry by an Environmental Enforcement Counsel, Respondent, presiding officer, or Board Member concerning the scheduling or rescheduling of any event contained in the procedural schedule, any filing or any order.

3. Except as otherwise provided by law, this section shall not prohibit any Board Member or presiding officer from communicating in any respect with other Board Members or having the aid or advice of the Code Enforcement Officer, counsel or consultants retained by the Board who have not participated and will not participate in the enforcement proceeding in an advocate capacity.

### E. General Conduct

**1. Opening statement.** The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

**2. Complaint.** The presiding officer shall read or otherwise have inserted in the official record of the proceeding the complaint and the response.

**3. Transcription of Testimony.** All testimony at hearings before the Board may be recorded as determined by the presiding officer and, as necessary, transcribed.

**4. Witnesses.** Witnesses shall be sworn and shall testify under oath. Witnesses will be required to state for the record their names, residence, and business or professional affiliation for purposes of the hearing. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Board.

**5. Continuance.** All hearings conducted pursuant to this section may be reasonably continued for reasonable cause and reconvened from time to time and from place to place by the Board or presiding officer as circumstances require. All orders for continuance shall specify the time and place at which such hearings shall be reconvened. The Board or presiding officer shall provide reasonable notice of the time and place of such a reconvened hearing to any person who so requests in writing, to the Respondent and to the public.

**F. Order of Proceedings.** The order of proceedings, unless modified by the presiding officer to facilitate the hearing, shall be as follows:

1. The Environmental Enforcement Counsel may offer an opening statement;

2. The Respondent may offer an opening statement;

3. The Environmental Enforcement Counsel may present evidence. Witnesses may be cross-examined by Respondent and questioned by Board Members, Staff or Board counsel after the completion of the witness' direct testimony;

4. The Respondent may present evidence. Witnesses may be cross-examined by the Environmental Enforcement Counsel and questioned by Board Members, Staff, or Board counsel after the completion of the witness' direct testimony;
5. The Environmental Enforcement Counsel may put on a rebuttal case;
6. The Environmental Enforcement Counsel may offer a closing statement;
7. The Respondent may offer a closing statement; and
8. The Environmental Enforcement Counsel may offer a rebuttal.

**G. Varying Order of Appearance.** When circumstances warrant, the Board or the presiding officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses are questioned.

**H. Record.** A full and complete record shall be kept of all enforcement hearings. The records shall include, but not be limited to, the complaint, supporting documents, all exhibits, proposed findings of fact and conclusions submitted by either party or by Board Staff and counsel, if any, staff documents, Respondent's answer and supporting documents, consent orders, if any, Board findings of fact and orders and the recording or transcript of the proceedings, if prepared.

At any time prior to the Board's final decision after the close of the enforcement hearing, the Board may reopen the record for further proceedings consistent with this section, provided, however, that the Board shall give written notice of such further proceedings at least ten (10) days prior to such proceedings. After the close of an enforcement hearing held pursuant to Section 4A-103, the Board may reopen the record after giving whatever notice is reasonably possible under the circumstances.

**I. Burden of Proof.** The Environmental Enforcement Counsel has the burden of proving that the alleged violation occurred and that proposed penalty, revocation, suspension, or modification of the permit is appropriate. Following the establishment of a prima facie case, Respondent shall have the burden of presenting and of going forward with any defenses, affirmative defenses, or mitigating circumstances.

**J. General Evidence.**

**1. Admissibility.** Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the presiding officer. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board. Existence and duration of a violation may be established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence.

**2. Official Notice.** The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters

## CHAPTER 4B

within its specialized knowledge and of statutes, regulations and nonconfidential Board records. Facts officially noticed shall be included and indicated as such in the record.

**3. Official Record.** An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure.

**4. Objections.** All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated at the time of such ruling during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

**5. Offer of Proof.** An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

### **K. Documentary and Real Evidence.**

1. All documents, materials and objects offered in evidence, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

2. All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the Town Office or as otherwise ordered, during normal business hours.

*Seventeenth, Sec. 42, 43 and 44. Eighteenth, Sec. 12.*

## **§4B-108 ENFORCEMENT ORDERS**

Following the conclusion of an enforcement hearing, or in the event of a default by Respondent, the Board shall within 30 days thereafter make findings of fact based on the record. The Board shall issue an order aimed at abating or correcting the violation and ensuring that the violation does not recur, and, in addition, may modify any permit, approval or order in whole or in part, condition the permit, approval or order on reasonable requirements or revoke or suspend a permit, approval or order, and assess a penalty, whenever the Board finds:

- A. The Respondent violated any term or condition of the permit, approval or order;
- B. The Respondent obtained a permit, approval or order by false statement, misrepresentation or failure to disclose fully all relevant facts;
- C. The permitted or approved activity poses a threat to human health or welfare;

D. There has been a change in any condition or circumstance that requires revocation, suspension conditioning or a temporary or permanent modification of the terms of the permit, approval or order; or

E. The Respondent violated any provision of this Ordinance.

The order shall state the date upon which it becomes effective and shall advise the Respondent that it may seek judicial review. The findings and order shall be served on the Respondent as provided in Section 4B-102(D).

All orders entered by the Board pursuant to this section shall be considered final Board action as of the date of the order for purposes of judicial review.

*Seventeenth, Sec. 45.*

## **§4B-109 PENALTIES**

A. Any person who violates any provision of this Ordinance or terms or conditions of any order, permit, approval or decision of the Board shall be subject to the following civil penalties, due and payable to the Town of Jay:

**1. For violations of Chapter 5.** A penalty of not less than \$100 nor more than \$2500, unless it is demonstrated that the person has violated Chapter 5 within the past two years. If such a previous violation has occurred, the maximum penalty may exceed \$2500 but shall be no more than \$25,000. Penalties may be assessed on a per day basis. If the economic benefit resulting from the violation exceeds the maximum applicable penalties, the maximum penalties may be increased. When so increased, the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit shall, without limitation, include the costs avoided or enhanced value accrued as a result of the violation. Economic benefit shall be deemed to have resulted from a violation if it is shown that the violation was a substantial, although not necessarily exclusive, factor in bringing about the benefit.

**2. For other violations of this Ordinance or permits issued thereunder.** A penalty of not less than \$100 nor more than \$10,000 for each day of the violation. The maximum civil penalty for violation of this Ordinance or permits issued hereunder may exceed \$10,000 for each day of the violation when it can be shown that there has been a previous violation of the same Ordinance provision by the same person within the 5 preceding years. If the economic benefit resulting from the violation exceeds the applicable maximum penalties, the maximum penalties may be increased. When so increased, the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit shall, without limitation, include the costs avoided or enhanced value accrued as a result of the violation. Economic benefit shall be deemed to have resulted from a violation if it is shown that the violation was a substantial, although not necessarily exclusive, factor in bringing about the benefit.

B. In setting penalties, the Board may consider all relevant factors including any one or more of the following:

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1. Prior violations by the same person;
2. The degree of environmental damage that cannot be abated or corrected;
3. The extent to which the violation continued;
4. Benefits derived by the person as a result of the violation;
5. Importance of setting a civil penalty substantial enough to deter future violation;
6. Whether penalties have been imposed by another governmental agency for the same incident(s);
7. the economic impact of the penalty on the violator; and
8. the duration of the violation as established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence.

The Board is not required to make itemized express findings on these factors.

C. Payment of any penalty assessed shall be made in cash or by a certified check drawn on a recognized financial institution, made payable to “Town of Jay” in an amount equal to the full amount of the penalty.

D. Any respondent found to have violated this Ordinance may be ordered to pay all the costs of the enforcement proceeding including but not limited to fees of the Environmental Enforcement Counsel, fees of expert witnesses and consultants, costs of discovery and exhibits.

*Seventeenth, Sec. 46, 47 and 48. Eighteenth, Sec. 13 and 14.*

### **§4B-110 JUDICIAL REVIEW**

Any person aggrieved by a final Board action or decision in an enforcement or emergency proceeding pursuant to this section may seek judicial review in accordance with state law within thirty (30) days of the date of the final Board action.

### **§4B-111 STAY**

The filing of a complaint by a Respondent shall not operate as a stay of the final Board action pending judicial review unless otherwise ordered by the Court.

### **§4B-112 NUISANCE**

Any property or use existing in violation of this Ordinance is a nuisance.

**§4B-113 JUDICIAL ENFORCEMENT**

**A. General.** In the event of a violation of any provision of this Ordinance or of any order, permit, approval or final decision or action of the Board or decree of court, as the case may be, the Town of Jay may institute judicial proceedings in accordance with state law for an order enjoining those acts or practices which constitute such a violation, for an order directing compliance with this Ordinance, or any order, permit, approval, condition or final decision or action pursuant to this Ordinance; for an order assessing penalties or any appropriate combination of actions.

**B. Substantial and Immediate Danger to Health, Safety or General Welfare.** If the Board finds that the violation of any provision of this Ordinance or the failure to comply with any order, permit, approval, condition, or final decision or action of the Board constitutes a substantial and immediate danger to the health, safety or welfare of any person(s), or property, or the environment of the Town of Jay, the Town of Jay may initiate immediate injunction proceedings to abate or correct such violation.

**C. Recovery of Costs.** In any action that the Town of Jay institutes before the Court to enforce any provisions of this Ordinance, the prevailing party in such action shall be allowed to recover attorneys fees incurred in connection with such action.



# CHAPTER 5

## SUBDIVISIONS

Part

1. Short Title and Definitions
2. Prohibitions
3. Application Procedure
4. General Design Guidelines and Requirements
5. Approval-Standards
6. Appeals, Violations, Penalties and Waivers

### **PART 1**

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#### **SHORT TITLE AND DEFINITIONS**

Section

- §5-101 Short Title
- §5-102 Definitions

#### **§5-101 SHORT TITLE**

This Chapter shall be known and may be cited as "**Jay Environmental Control and Improvement Ordinance-Subdivisions**"

#### **§5-102 DEFINITIONS**

A. In this Chapter, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- 1. Subdivision.** "Subdivision" means: a subdivision as defined in Title 30-A M.R.S.A. Section 4401 et seq. and as hereafter amended.
- 2. Tract or parcel of land.** "Tract" or "Parcel of Land" means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- 3. Jay Subdivision Permit.** "Jay Subdivision Permit" means the permit issued by the Board under this Chapter and includes all items submitted to obtain the approval.

**4. Permanent Marker.** "Permanent Marker" means a granite or cement monument, an iron pin or a drill hole in ledge.

**5. Permanent Monument.** "Permanent Monument" means a granite or cement monument not less than four (4) inches square with an iron reinforced rod at least 5/8" across the top capped with a surveyor's name and number. The Permanent Monument shall be set at least four (4) feet in the ground; provided, however, the Board may alter this requirement when the conditions on the ground make it impractical or impossible to reach four (4) feet in the ground.

**6. Angle Marker.** "Angle Marker" means an iron reinforced rod or similar rod capped with a surveyor's name and number.

**7. Applicant.** "Applicant" means any person applying under Part 3 of this Chapter for a Jay Subdivision Permit.

**8. Official Submittal Date.** "Official Submittal Date" means the date upon which the Board determines that a subdivision application is complete.

**9. Dwelling Unit.** "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

**10. Mobile Home.** "Mobile Home" means those units constructed after June 15, 1976, commonly called "*newer* mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.

**11. Mobile Home Park.** "Mobile Home Park" means a parcel of land under unified ownership used for the placement of 3 or more Manufactured Homes.

**12. Modular Home.** "Modular home" means manufactured homes commonly called "modular homes" that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

**13. Manufactured Housing.** "Manufactured housing" means a structural unit or units designed for occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site where it is used for housing.

**14. Mobile Home Park Lot.** "Mobile Home Park Lot" means the area of land on which an individual

home is situated within a mobile home park and which is reserved for use by the occupants of that home.

**15. New structure or structures.** "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

**16. Principal Structure.** "Principal structure" means any building or structure in which the main use of the premises takes place.

**17. Freshwater wetland.** "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

B. Not considered part of a great pond, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

**18. Abutter.** "Abutter" means any person who owns property contiguous to the Proposed Subdivision Parcel, or directly across any public or private street or way adjacent to the Proposed Subdivision Parcel. In the case of a revision or amendment to a previously approved subdivision, abutter shall include those abutters to the original subdivision as well as all current owners within the original subdivision.

**19. Proposed Subdivision Parcel.** "Proposed Subdivision Parcel" means all or a portion of any parcel(s) of land that the applicant is submitting for subdivision approval.

**20. Multiple Unit Housing.** "Multiple Unit Housing" means a structure or structures located on a single lot, which structures are designed or used to house 2 or more families.

**21. Farmland.** "Farmland" means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or

B. Used for the production of agricultural products as defined in Title 7 M.R.S.A. Section 152.2.

**22. Infrastructure Improvements.** "Infrastructure Improvements" means roads, drainage and stormwater systems, common water and sewer systems whether public or private.

**23. Substantial Construction.** "Substantial Construction" means completing of at least 30% of the required infrastructure improvements measured as a percentage of total estimated cost of improvements.

B. In addition, Chapter 1 contains general definitions applicable throughout this Chapter.

**PART 2**  
**PROHIBITIONS**

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Section

§5-201 Prohibitions

§5-202 Standards for Jurisdiction and Exemptions

**§5-201 PROHIBITIONS**

**A.** No person may sell, lease, develop, grade, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit:

1. In any subdivision unless the subdivision (A) has been approved by the Board, (B) the subdivision has been approved, when applicable, by the M.D.E.P, pursuant to Title 38 M.R.S.A. Chapter 3, subsection I, article 6, and (C) the Final Plan and the Board Order evidencing the Board's approval and a permit evidencing approval under Title 38 M.R.S.A. Chapter 3, subsection I, article 6, have been recorded in the Franklin County Registry of Deeds; if the subdivision is exempt from Title 38 M.R.S.A. Chapter 3, subsection I, article 6 by the operation of Title 38 M.R.S.A. Section 488(5), the recorded subdivision plan must note the exemption.

**B.** No person who has a Jay Subdivision Permit shall sell or convey any land in the subdivision unless a minimum of two (2) Permanent Monuments have been set within the subdivision and permanent markers have been set at all lot corners of the lots to be sold or conveyed and angle markers have been placed at all angles on the subdivision perimeter.

**C.** No public utility, as defined in Title 35-A M.R.S.A. Section 102.13, shall install or deliver services to any lot or dwelling unit in a subdivision unless the subdivision is an Exempt Division or has been approved by the Board and such approval is recorded in the Franklin County Registry of Deeds.

**D.** The violation of any of the conditions of a Jay Subdivision Permit shall be considered a violation of this Ordinance and subject to Chapter 4B.

**E.** A building official may not issue any permit for a building or use within a subdivision unless the subdivision has been approved under this Chapter and under Title 38, Chapter 3, Subchapter I, Article 6, where applicable.

**§5-202 STANDARDS FOR JURISDICTION AND EXEMPTIONS**

In determining whether the division of a tract or parcel of land into three (3) or more lots or dwelling units is a division creating a subdivision see Title 30-A M.R.S.A. Section 4401.4.

## **PART 3**

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### **APPLICATION PROCEDURE**

#### Section

- §5-301 Pre-application Meeting
- §5-302 Jay Subdivision Permit Application
- §5-303 Board Action Upon Submission
- §5-304 Board Action After Completed Application has been Submitted
- §5-305 Board Action After Approval of the Preliminary Application
- §5-306 Conditions of Jay Subdivision Permit

#### **§5-301 PRE-APPLICATION MEETING**

Applicants may request to be placed on Board's agenda for a pre-application meeting at least ten (10) days in advance of a regularly scheduled meeting by contacting the Code Enforcement Officer. The purpose of the pre-application meeting is to meet with the Board prior to formal submission, to present a sketch plan and make a verbal presentation regarding the site and the proposed subdivision. The pre-application meeting is an optional step for the applicant and is not required.

- A. Submissions:** The Pre-application Sketch Plan shall show, in simple sketch form, the proposed subdivision, and other features in relation to existing conditions. The Sketch Plan, which may be a freehand penciled sketch, will be supplemented with general information to describe or outline the existing conditions of the site and the proposed subdivision.
- B. On-Site Inspection:** Within thirty (30) days of the pre-application meeting, the Board may conduct an on-site inspection of the property.
- C. Ownership Interest:** The applicant shall furnish written evidence showing right, title or interest (option, contract for sale, etc.) in the property to be subdivided.
- D. Liquidation Harvesting:** The applicant shall submit a statement concerning timber harvesting resulting in any violation of the Liquidation Harvesting Rule.

#### **§5-302 JAY SUBDIVISION PERMIT APPLICATION**

##### **A. General.**

1. Application for a Jay Subdivision Permit shall be made in accordance with Chapter 3 of this Ordinance and shall contain such additional information relating to the subdivision as required by this Section.

2. The submission of an application for a Jay Subdivision Permit shall not be considered to initiate the review process for the purpose of bringing the application under the protection of Title 1 M.R.S.A. Section 302 as amended.

3. **Fees.** The following Filing Fees and Review Fees shall be assessed against all applicants for Jay Subdivision Permit approval, including amendments or revisions to previously approved plans:

a. **Filing Fee.** All applications for Subdivision approval, including amendments or revisions to previously approved plans, shall be accompanied by a nonrefundable filing fee. The filing fee for new subdivisions shall be \$100 per lot or dwelling unit and the filing fee for amendments or revisions to previously approved plans shall be \$50 per lot or dwelling unit. Filing fees shall be made payable by check to the Town of Jay.

b. **Review Fee.** The applicant shall pay all direct costs specifically related to the application, including, legal, engineering, environmental consulting, survey, architectural, land use planning, other professional fees, preparation of information and materials for the Board, and other costs specifically related to the application (collectively "Review Costs"). The JAY SUBDIVISION REVIEW ACCOUNT is hereby established. All applications for Subdivision approval, including amendments or revisions to previously approved plans, shall be accompanied by an additional payment of \$150 for each lot or dwelling unit, which shall be deposited in the SUBDIVISION REVIEW ACCOUNT. The Review Fee may be used by the Board for Review Costs.

If the initial amount of the Review Fee is inadequate or anticipated to become inadequate, the Board shall make a reasonable estimate of the additional fee required to complete review and issue a notice to the applicant containing the following: (i) a request for payment of the additional Review Fee, and (ii) the general nature of the Review Costs expected to be incurred.

The Board and the Code Enforcement Officer may suspend activity regarding the application until any additional Review Fee has been paid. If an additional Review Fee is not paid within 60 days after notice, the Board may deny an application. Final payment of the Review Fee shall occur before issuance of the approval, disapproval, or approval with conditions.

When no further review is required for an application, any remaining Review Fee in the SUBDIVISION REVIEW ACCOUNT shall be refunded to the applicant. Such refund shall be complete no later than 60 days after the approval, denial, or approval with conditions of the application. Such refund shall be accompanied by a final accounting of expenditures from the SUBDIVISION REVIEW ACCOUNT specifically related to the application.

4. The review process for a Subdivision Permit application shall commence when the Board determines that such application is complete and has issued a receipt indicating that a completed application has been submitted.

5. A determination by the Board that a completed application has been submitted in no way commits or binds the Board to issue a Jay Subdivision Permit.

6. As provided for in Chapter 2 § 2-110(C), no item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than ten (10) days prior to the date of a meeting or other proceeding, provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submission requirement. All applications, plans and other materials shall be submitted to the Code Enforcement Officer ten (10) days prior to the date of the meeting or other proceeding for review and distribution to the Board.

**B. Application Form.** The applicant shall submit eleven (11) copies of the application for a Jay Subdivision permit which shall consist of the following subsections:

1. General Information (see Subsection C),
2. Preliminary Plan (see Subsection D),
3. Topographic, Soil Erosion and Phosphorus Control Plans (see Subsection E), and
4. Other (see Subsection F).

**C.** The applicant shall submit a written application containing the following general information in the following order:

1. Project name and the name and address and phone number(s) of applicant.
2. Name, address and phone number(s) of the owners of the tract or parcel of land or structure to be subdivided (if other than applicant).
3. If applicant is a corporation, state whether the corporation is authorized to do business in Maine, and attach a copy of a current Certificate of Good Standing from the Secretary of State of Maine.
4. Name, phone number(s) and address of applicant's authorized representative (if different than applicant). Attach letter of authorization signed by property owner that authorizes the owner's representative to act on behalf of the property owner.
5. Name, phone number(s) and address and number of Registered Professional Engineer, Land Surveyor or Planner who prepared the preliminary plan of the subdivision.
6. Address to which all correspondence from the Board should be sent.
7. The nature of the applicant's real estate interest in the parcel or structure to be subdivided and a copy of the instrument creating the applicant's interest.
8. A list of the owners of record of any land abutting the tract or parcel of the lot to be subdivided or the lot on which the structure to be subdivided sits.
9. A statement from the applicant as to whether the tract or parcel of land or structure to be subdivided is in the entire or contiguous ownership of applicant.
10. The map and lot number from the Jay Tax Assessors office that shows the location of the tract or parcel of land or structure to be subdivided.
11. A description of the current use of the tract or parcel of land or structure to be subdivided and whether it is within the jurisdiction of the Jay's Shoreland Zoning Ordinance and Floodplain Management Ordinance.
12. Total acreage of tract or parcel of land to be subdivided and the total number of lots proposed. For structures, the total square footage of the structure, the number of dwelling units proposed, and the total square footage of each dwelling unit.
13. Proposed method of sewage disposal and the results of any on-site soils investigation of the tract.

14. Proposed use of the tract or parcel of land or structure to be subdivided.
15. Proposed method of water supply system. Attach evidence of adequate ground water supply and quality submitted by a well driller or a hydro geologist familiar with the area.
16. Copies of any easement, restrictive covenants of record or other instruments on record affecting the property, including any proposed easements, restrictive covenants or other instruments to be recorded in connection with the subdivision.
17. A statement of applicant's financial and technical capability to complete the proposed subdivision improvements and to comply with the terms and conditions of this Chapter.
18. If the application constitutes a revision or amendment to a previously approved subdivision, a copy of the approved subdivision plan.
19. A copy of the approved Driveway or Entrance permit issued by the Maine Department of Transportation if a driveway or entrance will enter onto Route 4, Route 17, Route 133, Route 140, Route 156, the Maxwell Road, the Crash Road, or the Riley Road.
20. For applications containing roads, a copy of the Proposed Town Way Permit, if previously issued by the Planning Board, or, for applications proposing Private Roads, submittals requirements as outlined in §5-401(A)(6).
21. A statement concerning timber harvesting resulting in any violation of the Liquidation Harvesting Rule.
22. Municipal service impact analysis, if required by the Board.
23. The type and amount of a performance guarantee sufficient to defray all costs and expenses of the proposed infrastructure improvements resulting from the subdivision.

#### **D. Preliminary Plan.**

1. The preliminary plan for the proposed subdivision shall be submitted with five (5) copies and one copy of the plan reduced to a size of 8 1/2" by 11" to the Board and shall be embossed by a seal of a land surveyor registered in Maine with the Maine Board of Registration For Professional Land Surveyors. The surveyor shall certify that the survey is in accordance with the standards of the Maine Board of Registration For Professional Land Surveyors that the information shown on the plan has been obtained from the actual field survey on the ground, that it is correct, and that there are no encroachments either way across the property lines and no known easements except those as may be shown. The preliminary plan shall not be less than 18 inches by 24 inches and shall be drawn to a scale of 1 inch equals not more than 100 feet.
2. The preliminary plan shall include the following information:
  - a. Name of proposed subdivision; location of subdivision; name of applicant; and signature and seal of Professional Land Surveyor.
  - b. Lot/unit numbers.
  - c. Location of permanent monuments/markers and angle markers.

- d. Date, magnetic bearing date, north point and graphic map scale.
- e. Boundaries of the tract or subdivision, proposed lot lines with approximate dimensions and lot areas and total area of the tract or parcel of land to be subdivided.
- f. Location of temporary markers to enable the Board to locate each lot readily and appraise the basic lot layout in the field. At a minimum, temporary markers shall be set at all corners of survey and lot lines, including all angle points, and all subdivision perimeter survey lines shall be brushed out to make the line visible.
- g. Location of all parcels to be dedicated to public use.
- h. Names of Abutters and subdivisions. Reference to recorded subdivision plans adjacent to the project boundary, and to the name, and book and page number as recorded in the Franklin County Registry of Deeds of all abutters. This requirement may be relaxed by the Board for subdivision plan revisions submitted pursuant to Chapter 5, Section 5-306.A.4.
- i. Location of rivers, streams and brooks within or abutting the proposed subdivision, wetlands regardless of size, and areas subject to storm flooding.
- j. Location of all required soils investigation test pits.
- k. Location and size of existing or proposed structures.
- l. Location of significant wildlife habitat, archaeological sites, rare and endangered species, historic buildings and sites and scenic locations as identified in Comprehensive Plan.
- m. Location and size of any sewers and water mains and other utilities within or adjoining the subdivision; location and size of any culverts and drains.
- n. Location, names and widths of existing and proposed streets, highways, easements and rights-of-way within or adjoining the subdivision. All street names shown for proposed streets located in a subdivision shall be checked against local records to assure that none are duplicates of existing street names or so similar as to cause confusion. All roads in the subdivision shall comply with the Road Ordinance of the Town of Jay Maine.
- o. Type, location, profile and cross-section of all existing and proposed surface water drainage.
- p. The location of farmland.
- q. Location of watershed boundaries if located in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds.
- r. Location and type of any easements.
- s. Suitable space on the plan to record the date and conditions of approval, if any. This space shall be substantially similar to the following form:

APPROVED DATE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE

This approval is limited to the requirements of Title 30-A M.R.S.A. Section 4401, et seq., and Chapter 5 of the Jay Environmental Control and Improvement Ordinance and the Jay Subdivision Permit recorded herewith. Roads and public open spaces shown on the Final Plan may only be accepted by a vote of the Town of Jay. This approval does not indicate compliance with any other federal, or state statutes or local ordinances.

The above Title Block and notice shall appear on all plans submitted for review and formal approval by the Board.

t. A reference to the book and page of the Board order approving the subdivision recorded in the Franklin County Registry of Deeds. The reference shall be similar to the following form:

See Town of Jay Planning Board Findings Recorded in the Franklin County Registry of Deeds in Book \_\_\_\_\_ , Page \_\_\_\_\_

**E. Topographic, Soil Erosion and Phosphorus Control Plans.**

1. The Topographic Plan for the subdivision shall show the topography of the tract or parcel to be subdivided at 20 foot contour intervals and shall show the location of the existing natural or man-made features influencing the layout of the subdivision. The Board may require other contour intervals if necessary to review a particular application.
2. The Soil Erosion Plan shall show the soil erosion, storm water run-off and sediment control plans for the subdivision, including how and where the applicant intends to control surface water, erosion and sediment.
3. A Phosphorus impact analysis shall be submitted if located in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds.

**F. Other Information:**

1. The applicant shall submit a written statement from any public utility or municipal department (including, but not limited to, where applicable, Town Sewer and Water Department, Well Drilling Company) that will service the subdivision stating that a sufficient or adequate supply of its product will be available to meet the needs of the subdivision and statements from the fire, police, recycling and transfer, highway and school departments concerning their review of the subdivision.

2. In areas where on site waste water disposal is proposed, the applicant shall submit a certification or an opinion from a licensed site evaluator which shall state that all lots proposed by the subdivision application have situated within their bounds a location suitable for a subsurface disposal system.
3. The applicant shall submit evidence demonstrating that there will be no substantial adverse effect on ground water quality, such as:
  - a. A comprehensive list, including physical and chemical characteristics and projected quantities of wastes to be disposed of or stored within the proposed development which may potentially contaminate the ground water.
  - b. Methods for preventing ground water pollution as the result of the disposal and/or storage of wastes.
  - c. An evaluation of the geological, hydrologic, and soils conditions of the development site.
  - d. Data establishing background water quality.
  - e. Proposed plan of action, and alternatives, to be followed in the event the proposed development results in ground water contamination.
4. Such other information as the Board may reasonably require pursuant to this Section and Section 5- 401, including revised submissions.
5. The applicant shall submit any other information that it determines will assist the Board in making its evaluations and its findings of the subdivision pursuant to Section 5-501.

**G. Temporary Layout.** The applicant shall lay out his proposed subdivision on the tract or parcel of land with sufficient temporary markings to enable the Board to make an on-site inspection of the proposed subdivision. The temporary markers shall also indicate where the permanent markers will be placed. At a minimum, temporary markers shall be set at all corners of survey and lot lines and all subdivision perimeter survey lines shall be brushed out to make the line visible.

## **§5-303 BOARD ACTION UPON SUBMISSION**

- A. Upon receiving a subdivision application, the Board will issue the applicant a dated receipt and shall notify all Abutters by certified mail for new subdivisions and by regular mail for all amendments to previously approved plans, and the clerk and the reviewing authority of municipalities that abut or includes any portion of the proposed subdivision, specifying the location of the proposed subdivision, a general description of the project, and that abutters have five (5) days to request a public hearing. The Board will notify by mail a public drinking water supplier if the subdivision is within its source water protection area.
- B. Within thirty (30) days after receipt of an application the Board shall notify the applicant in writing either that the application is a complete application or, if the application is not complete, the specific additional information needed to make a complete application.
- C. The Board may schedule an on-site inspection of the proposed subdivision if it determines such inspection necessary to its review of the application.

- D. When the Board has determined that an application is complete, it shall issue the applicant a receipt stating the Official Submittal Date.
- E. After the Official Submittal Date, the Board shall begin its consideration and evaluation of the application and shall determine whether it will hold a public hearing. The public hearing date shall be within 30 days after the official submittal date. A public hearing, if ordered, shall be held in accordance with Chapter 3 of this Ordinance.
- F. If the Board decides to hold a public hearing, the Board shall cause notice of the date, time and place of the hearing to be given to the applicant and to be published in a newspaper of general circulation, in Jay at least two (2) times in advance of the hearing. The first date of publication shall be at least seven (7) days prior to the hearing.
- G. If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review an application shall be held jointly by the reviewing authority from the other municipality and the Board. All meetings and hearings to review an application for a revision or amendment to a subdivision that crosses municipal boundaries must be held jointly by the reviewing authorities from each municipality. In addition to other review criteria, the reviewing authorities shall consider and make a finding of fact regarding the impact on the adjoining municipality. The reviewing authorities in each municipality, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.
- H. The Board may not accept or approve final plans or final documents prepared by a licensed professional land surveyor that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed.
- I. The Board shall review all requests for subdivision approval. On all matters concerning subdivision review, the Board shall maintain a permanent record of all its meetings, proceedings and correspondence.

**§5-304 BOARD ACTION AFTER A COMPLETED APPLICATION HAS BEEN SUBMITTED**

- A. Within 30 days of a public hearing, or if no hearing is held, within sixty (60) days after the Official Submittal Date, or within such other time limit as has been mutually agreed by the Board and the applicant, the Board shall approve, deny, or approve upon any terms and conditions that it considers advisable to satisfy the standards in Section 5-501; satisfy any other regulations adopted by the Board; and protect and preserve the public's health, safety and general welfare.
- B. In all instances, the burden of proof shall be upon the applicant.
- C. The Board shall issue its decision in writing, stating the Boards findings of fact establishing that the application does or does not meet the provisions of this Ordinance and shall state its conclusions of law, including a plain statement of the appropriate rights for reconsideration and judicial review pursuant to Section 5-601 and the time within which rights must be exercised.

**§5-305 BOARD ACTION AFTER APPROVAL OF THE PRELIMINARY APPLICATION**

A. In the event that the Board approves the preliminary application, the applicant shall submit a Final Plan within 6 months after the date of the Board's approval.

B. The Final Plan:

1. Shall include all changes ordered by the Board when it approved the preliminary subdivision application.
2. Shall have no substantial changes except as provided in paragraph 1 hereof, between the preliminary plan and the final plan;
3. Shall be drawn in ink on mylar suitable for recording in the Franklin County Registry of Deeds;
4. Shall be submitted with one (1) original for recording and three (3) copies;
5. Shall include the following:
  - a. Name of proposed subdivision; location of subdivision; name of applicant; and signature and embossed seal of Professional Land Surveyor.
  - b. Lot/unit numbers.
  - c. Location of permanent monument/marker and angle markers. A minimum of two (2) Permanent Monuments shall be placed on each subdivision and permanent markers shall be set at all lot corners of the lot sold or conveyed. Angle markers shall be placed at all angles on the subdivision perimeter. Within thirty (30) days of approval, or in no event later than May 1 for approvals granted after November 15, the Applicant shall provide the Board with a letter from a professional land surveyor that all permanent monuments/markers and-angle markers have been set in the ground in accordance with the approved Final Plan.
  - d. Date, magnetic bearing date, north point and graphic map scale.
  - e. The final lot lines with dimensions bearing deflection angels, radius and control angles, sufficient to reproduce them on the ground and showing total lot acreage of each lot of the subdivision.
  - f. Location of all parcels to be dedicated to public use.
  - g. Location and type of any easements.
  - h. Location of rivers, streams, brooks and wetlands.
  - i. The boundaries of any flood hazard areas and the 100-year flood elevation. The plan shall indicate that all principle structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation
  - j. Location of all required soils investigation test pits.

- k. Location and size of existing or proposed structures.
- l. Location, names and widths of existing and proposed streets and rights-of-way.
- m. Type and location, of all existing and proposed surface water drainage.
- n. Suitable space on the approved plan to record the date and conditions of approval, if any. This space shall be substantially similar to the following form:

APPROVED DATE:

\_\_\_\_\_

\_\_\_\_\_

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NOTICE

This approval is limited to the requirements of Title 30-A M.R.S.A. Section 4401, et seq., and Chapter 5 of the Jay Environmental Control and Improvement Ordinance and the Jay Subdivision Permit recorded herewith. Roads and public open spaces shown on the Final Plan may only be accepted by a vote of the Town of Jay. This approval does not indicate compliance with any other federal, or state statutes or local ordinances.

The above Title Block and notice shall appear on all plans submitted for review and formal approval by the Board.

- o. A reference to the book and page of the Board order approving the subdivision recorded in the Franklin County Registry of Deeds. The reference shall be similar to the following form:

See Town of Jay Planning Board Findings Recorded in the Franklin County Registry of Deeds in Book \_\_\_\_\_ , Page \_\_\_\_\_

C. Upon approval of the Final Plan by the Board, the Board shall sign the original and three copies. The applicant shall have the original Final Plan and the Board Order approving the plan recorded in the Franklin County Registry of Deeds within ninety (90) days of approval. One signed copy shall be given to the applicant and two signed copies shall remain with the Board as part of its permanent records. The applicant shall notify the Board within ten (10) days after the recording in the Franklin County Registry of Deeds of the following: the Book and Page where the Board order is recorded, and the plan number where the Final Plan is recorded.

D. In the event that the Final Plan and the Board order are not recorded in the Registry of Deeds within ninety (90) days after the date of their signing, the approval shall automatically be void.

E. In the event the applicant fails to comply with any provision of Subsection C above, the

Board may revoke its approval of the Final Plan by filing a notice of such revocation in the Franklin County Registry of Deeds. Not less than thirty (30) days prior to filing such notice of revocation, the Board must provide an applicant with written notice of the Board's intention to file such notice of revocation.

**§5-306 CONDITIONS OF JAY SUBDIVISION PERMIT**

A. The Board may impose any appropriate and reasonable conditions to insure compliance with this Chapter. However, every Jay Subdivision Permit shall be subject to the following standard conditions and conditions of Chapter 3.

1. Employees and authorized representatives of the Town of Jay shall be allowed access to the premises of the permit holder during normal business and operating times and at such other times as the Board deems necessary to perform such tests and inspections and examine all records relating to the subdivision.

2. The granting of the Jay Subdivision Permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.

3. Further division of approved lots by the applicant or future owners is specifically prohibited without prior approval of the board, and the applicant shall include deed restrictions to that effect.

4. Subdivision Plan Revisions After Approval under this Ordinance or a previous ordinance: No changes, erasures, modifications or revisions including further division of approved lots by the applicant or future owners shall be made to any subdivision plan approved under a previous Jay ordinance or to a Final Plan after Final Plan approval has been granted by the Board pursuant to subsection 5-305 hereof, unless the plan is resubmitted to the Board and the Board approves such modification. In the event that a plan is recorded without complying with this requirements, the plan shall be considered null and void.

Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended, including a reference to the book and page on which the original plan is recorded.

5. Each approved lot shall have not more than one dwelling unit unless otherwise approved by the Board.

6. The applicant shall secure and comply with all applicable federal, state, and Jay licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

7. The applicant shall submit all reports and information requested by the Board demonstrating that the applicant has complied with or will comply with all terms and conditions of the Jay Subdivision Permit. All preconstruction terms and conditions must be met before construction begins.

8. The approval by the Board of the Final Plan shall not be deemed to constitute or be evidence of any acceptance by Jay of any street, easement, or other open space shown on such Final Plan. When a park, playground, or other recreation area shall have been shown on the Final Plan to be dedicated to Jay, approval of the Final Plan shall not constitute an acceptance by Jay of such areas. The Board shall require the Final Plan to contain appropriate notes to this effect.
9. If, upon inspection, any of the required Subdivision Permit conditions have not been completed in accordance with the plans and specification filed by the Permit holder, the Board shall take such steps as are necessary to enforce such Permit and the provisions of this Chapter.
10. The permit holder shall be required to maintain all subdivision improvements and shall provide for snow removal on all streets and sidewalks of the subdivision until acceptance of such streets by the Town of Jay.
11. Any applicant issued a permit pursuant to this Chapter in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds shall have a copy of the permit on site while work authorized by the permit is being conducted.
12. Failure to commence substantial construction of the required infrastructure improvements for the subdivision within two years of the date of approval and signing of the Plan shall render the Plan null and void. A statement of this effect must appear on any final plan. Upon good cause shown, the Board may extend the approval for additional two year periods. The extension request must be made to the Board at least thirty days prior to the time of expiration. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect.

**PART 4**

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**GENERAL DESIGN GUIDELINES AND REQUIREMENT**

Section

§5-401 General Design

Guidelines

§5-402 Requirements

**§5-401 GENERAL DESIGN GUIDELINES**

**A. General Design Guidelines:** The Board shall consider the following general design guidelines before granting approval of a subdivision permit application:

**1. Public Water and Sewer:** Where available all subdivisions shall be served by public water and sewer.

**2. Buffer Strip:** The Board may require a buffer strip consisting of such elements as natural vegetation, where the Board finds a buffer strip to the subdivision desirable. The Board will consider the following in establishing buffer strips.

a. Plant materials shall be a least four feet in height and be of such evergreen species that will produce ultimately a dense audio/visual screen at least eight feet in height. Alternatively, a six-foot high wooden fence, without openings wider than 1", may be substituted.

b. The buffer will be maintained permanently, and any plant material which does not live shall be replaced within one year.

c. The plantings of the buffer shall be so placed that at maturity it will be no closer than three feet from any street or property line.

d. The buffer will be broken only at points of vehicular/ pedestrian access. When the buffer is broken by pedestrian access it shall be designed to not allow direct visual access to the adjacent property.

**3. Lots:** Each lot in any subdivision other than a Mobile Home Park shall comply with the provisions of the minimum lot size law, Title 12 M.R.S.A. Section 4807 et seq. and with the following dimensional requirements:

a. Private septic: The minimum lot size is 40,000 square feet except for any Multiple Unit Housing, for which the minimum lot size is 20,000 square feet per dwelling unit.

b. Town Sewer: The minimum lot size is 15,000 square feet except for any Multiple Unit Housing, for which the minimum lot size is 7,500 square feet per dwelling unit.

c. Private septic: A minimum of 150 feet road frontage per lot. Town sewer: A minimum of 100 feet road frontage per lot. Road frontage shall be on a public way established by or maintained under public authority or a private right of way, the description of which is recorded

in the Franklin County Registry of Deeds.

d. Lots may be laid out on turn-arounds or cul-de-sacs with a minimum 60 feet radius. Such lots shall have a 78 feet minimum chord distance on the road.

Each lot in any Mobile Home Park subdivision shall comply with the provisions of Title 30-A M.R.S.A. Section 4358, sub. 3, and the following dimensional requirements:

a. The size of any mobile home park lot served by a public sewer system shall be a minimum of 6,500 square feet.

b. The size of any mobile home park lot with on-site subsurface waste water disposal shall be a minimum of 20,000 square feet.

c. The size of any mobile home park lot served by a central on-site subsurface waste water disposal system approved by the Department of Health and Human Services shall be a minimum of 12,000 square feet. The overall density of a mobile home park served by a central on-site subsurface waste water disposal system shall not be more than one home for every 20,000 square feet.

#### **4. Stormwater-Management**

a. Adequate provision shall be made for disposal of all stormwater generated within the subdivision and for any drained groundwater through a management system of ditches, swales, culverts, underdrains, and/or storm drains. The stormwater- management system shall be designed to conduct stormwater flows to existing watercourses or storm drains. All components of the stormwater-management system shall be designed to meet the criteria of a twenty-five-(25) year storm.

b. The stormwater management system shall be designed to accommodate upstream drainage taking into account existing conditions and approved or planned developments not yet built, and shall include a surplus design-capacity factor of twenty-five (25) percent for potential increase in upstream runoff.

c. Downstream drainage requirements shall be studied to determine the effect of the proposed subdivision. The storm drainage shall not overload existing or future planned storm-drainage systems downstream from the subdivision nor cause downstream erosion. The subdivider shall be responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

d. Wherever the storm-drainage system is not within the right-of-way of a public street, perpetual easements shall be provided to the town allowing maintenance and improvement of the system.

e. Where soils require a subsurface drainage system, the drains shall be installed and maintained separately from the stormwater-drainage system.

#### **5. Erosion and Sedimentation Control:** Erosion soil and sedimentation of watercourse and water bodies shall be minimized. The following measures shall be included, where applicable, as part of subdivision review and approval.

a. Stripping of vegetation, regrading or other development shall be done in such a way as to minimize erosion.

- b. Development shall keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and so as to adequately handle surface water runoff.
- c. The disturbed area and the duration of exposure of the disturbed area shall be kept to practical minimum.
- d. Disturbed soils shall be stabilized as quickly as practical. Temporary mulch will be placed on all disturbed areas where seeding or other construction or stabilization activities will not take place for over 14 consecutive days.
- e. Temporary vegetation or mulching shall be used to protect exposed critical areas during development.
- f. The permanent (final) vegetation and structural erosion control measure shall be installed in the time periods contained in the erosion and sediment control plan.
- g. Until the disturbed area is stabilized, sediment in the runoff water shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods.
- h. Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the developer causing such sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any damage at his expense.
- i. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.
- j. The standards set forth in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices (March 1991 and as amended) shall be employed.

**6. Streets and Roads:** The design and construction of all Proposed Town Ways shall be in accordance with the provisions of the Town of Jay, Maine — Town Way Ordinance. Private Roads proposed within a subdivision shall provide for, at a minimum, a Road Association comprised of property owners within the proposed subdivision. The applicant shall submit to the Planning Board for approval any of the following documents demonstrating at a minimum that the Road Association has the powers and duties to levy assessments upon its members to pay for Private Road repair, replacement and maintenance (including snow plowing); the Declaration establishing a lien process, Road Association's Articles of Incorporation, its organizing documents, its Bylaws, and/or its Operating Agreement.

The following words shall appear on any proposed subdivision plan containing a Private Road:

"All roads shall remain private, to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town of Jay until they meet the provisions of the Town Way Ordinance and are accepted by an affirmative vote at a Town meeting."

**7. Groundwater Protection:** The Board may impose, as a condition of subdivision approval, reasonable conditions to ensure that the proposed subdivision does not have an adverse effect on ground water quality. When appropriate, the Board may require that a subdivision ground water monitoring program be established by applicant and that regular reports be filed with the Town of

Jay at designated intervals.

**8. Phosphorous Export:**

a. Phosphorous export from a proposed subdivision development shall be calculated according to the procedures defined in *Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development* (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). Projects proposed within the direct watershed of a pond listed below shall be designed to limit phosphorous runoff to the levels defined below. Upon request, copies of all worksheets and calculations shall be made available to the Board.

Lake Name	Protection Level	Lake Load Allocation (lbs/acre/yr) <sup>1</sup>
North Pond	Medium	0.050
Parker Pond	Medium	0.036
Pease Pond	Medium	0.040
Robinson Pond	Medium	0.044
Wilson Pond	Medium	0.038
Unnamed Pond (8789)	Medium	0.047
Unnamed Pond (8801)	Medium	0.044

Source: Maine Department of Environmental Protection November 8, 2010

<sup>1</sup>Lake Watershed Load Allocation represents pounds (lbs) phosphorus per acre per year allocated to Jay's share of watershed per parts per billion (ppb).

b. Phosphorous-control measure shall meet the design criteria contained in *Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development* (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). The Board shall require the reasonable use of vegetative buffers, limits on clearing, and minimal road lengths and shall encourage the use of other nonstructural measures prior to allowing the use of high-maintenance structural measures such as infiltration systems and wet ponds. Where buffers can be designed and maintained to remove 75% of the phosphorus in accordance with Table 6.1 of Stormwater Management for Maine: Best Management Practices, it will be assumed that the project meets this standard.

**8. Protection of Significant Wildlife Habitat:** Applicants proposing to subdivide land in or within seventy-five (75) feet of significant wildlife resources identified by the Maine Department of Inland Fisheries and Wildlife shall consult with a recognized wildlife or fisheries consultant or the Maine Department of Inland Fisheries and Wildlife and provide their written comments to the Board. The Board shall consider any recommended measures provided to minimize impacts on such habitats. Any conditions to the approval to wildlife or fisheries habitat preservation shall appear on the plan and as deed restrictions to the affected lots.

## §5-402 REQUIREMENTS

**A. Conformance with Other Laws, Regulations:** The proposed subdivision shall be in conformance with all applicable Jay, state and federal ordinances, statutes, and regulations. If the proposed subdivision meets the definition of a subdivision as defined in the Site Location Act, Title 38 M.R.S.A., Section 482, as amended, the applicant must secure the approval of the M.D.E.P. and the Board prior to any construction activity constituting a division of the tract or structure.

**B. Phasing of Development:** At the time the Board grants Final Plan approval, it may require the Plan to be divided into two or more sections subject to any conditions the Board deems necessary when it determines that police, fire and/or capacity will be exceeded.

**C. Performance Bonds and Letters of Credit:**

1. Prior to approval of the subdivision, the Board may require an applicant to file a performance guarantee with the Board in an amount sufficient to defray all costs and expenses of the proposed public improvements resulting from the subdivision. Such performance guarantee may be tendered in the form of a certified check payable to the Town of Jay, or a letter of credit payable to the Town of Jay or a performance bond running to the Town of Jay and issued by a surety company acceptable to the Town of Jay. The conditions and amount of such certified check, letter of credit or performance bond shall be established by the Board and which shall be in an amount not less than the total cost of furnishing, installing, connecting and otherwise completing all of the necessary street grading, paving, storm drainage, and utilities, including other infrastructure improvements specified on the Final Plan.

2. The Board may grant an extension of not greater than twelve (12) months to the guaranteed performance period upon petition from the applicant demonstrating good cause for such extension. The extension request must be made to the Board at least thirty days prior to the time of expiration.

3. Before an applicant may be released from its guarantee of performance as provided hereunder, the Board shall require certification from the municipal officers with jurisdiction over any aspect of the applicant's infrastructure improvements, that all improvements have been completed in accordance with all applicable standards (including state, federal and Jay codes, ordinances, laws and regulations).

4. The Board may, at its discretion, waive the requirement of a performance guarantee provided that no lot in the subdivision may be sold until it shall have been certified, in the manner set forth in Subsection 3 above, that all infrastructure improvements have been made. The Board, in consultation with the applicant, shall set a reasonable completion date for the improvements, and the subdivision approval shall be voided if such improvements are not completed within the specified time. The Board may, upon request from the applicant, extend the completion date as provided in subsection 2 above. The Board shall have the discretion of withholding approval of the Final Plan until all improvements are completed in accordance with subsection 3 above.

## **PART 5**

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### **APPROVAL-STANDARDS**

Section

§5-501 Standards

#### **§5-501 STANDARDS**

The Board shall approve, deny, or approve with conditions, all applications for subdivisions in accordance with the provisions of this chapter. After submission of a completed application, the Board shall approve an application or approve it with conditions if the Board makes a positive finding based on the following criteria:

**A. Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and subsoils and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents; and
5. The applicable state and local health and water resource rules and regulations;

**B. Sufficient water.** The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;

**C. Municipal water supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

**D. Erosion.** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

**E. Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;

**F. Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

**G. Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

**H. Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the Town of Jay, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline; In making this determination the Board shall consider.

1. Maps and information provided by the Maine Historic Preservation Commission
2. Maps and information provided by the Maine Beginning with Habitat program into their review process.

**I. Conformity with local ordinances and plans.** The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Board may interpret these ordinances and plans;

**J. Financial and technical capacity.** The subdivider has adequate financial and technical capacity to meet the standards of this section;

**K. Surface waters.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

**L. Ground water.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

**M. Flood areas.** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

**N. Freshwater wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

**O. River, stream or brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;

**P. Storm water.** The proposed subdivision will provide for adequate storm water management;

**Q. Spaghetti-lots prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

**R. Lake phosphorus concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

**S. Impact on adjoining municipality.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

**T. Lands subject to liquidation harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or the Board may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If the Board requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the Board within 30 days of receipt of the Board's request. If the bureau notifies the Board that the bureau will not provide assistance, the Board may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.

**T. Farmland.** All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district.

**PART 6**

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**APPEALS, VIOLATIONS, PENALTIES AND WAIVERS**

§5-601 Appeals

§5-602 Violations and Penalties

§5-603 Waivers

**§5-601 APPEALS**

Any aggrieved party may appeal a decision of the Board with respect to the issuance of a Jay Subdivision Permit in accordance with the procedures outlined in Chapter 3 of this Ordinance.

**§5-602 VIOLATIONS AND PENALTIES**

Any violation of this Chapter shall be subject to penalties in accordance with Chapter 4B of this Ordinance.

**§5-603 WAIVERS**

Where the Board makes written findings of fact that extraordinary and unnecessary hardships may result to an applicant from strict compliance with this Chapter or that there are special circumstances of a particular tract or parcel of land or structure proposed to be subdivided, it may waive portions of the General Guidelines and Requirements, Submissions Requirements or the Standards of this Chapter in order to permit a subdivision, provided that the public health, safety, and welfare are protected, and provided that the waivers do not have the general effect of nullifying the intent and purpose of this Chapter. In granting waivers, the Board shall require such conditions consistent with the objectives of this Chapter. In accordance with 30-A M.R.S.A. Section 4406(1)(B), any such waiver shall be noted on the Final Plan.





# CHAPTER 9

## SOLID WASTE-- FACILITIES

Part

1. Declaration of Intent and Objectives
2. Short Title and Definitions
3. Prohibitions, Exemptions, Modifications and Saving Clause
4. Jay Solid Waste Facility Permit and Wood Waste Facility Permit
5. Standards
6. Construction and Operations
7. Closure
8. Post-Closure Monitoring and Maintenance

### **PART 1**

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## **DECLARATION OF INTENT AND OBJECTIVES**

Section

§9-101 Declaration of Intent and Objectives

### **§9-101 DECLARATION OF INTENT AND OBJECTIVES**

- A. By and through this Chapter, the Town of Jay declares its intent and objective to establish rules governing the disposal of solid waste in a manner that does not pollute any water, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance.
- B. By and through this Chapter, the Town of Jay declares its intent and objective to be as consistent as possible with all applicable federal and state laws governing the disposal of solid waste. Laws that may apply include but are not limited to, Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. §1301-1319 ("ME Statutes"); Maine Department of Environmental Protection Solid Waste Management Rules (ME Rules) Chapter 400, 401, and 405; Solid Waste Disposal Act, 42. U.S.C.A. Section 6901 et seq., including the Resource Conservation and Recovery Act of 1976; The Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et. seq; the Clean Air Act, 42 U.S.C.A. Section 7401 et. Seq. ("Fed. Statutes") and rules promulgated pursuant to these Acts, including but not limited to 40 CFR 240-258 ("Fed. Rules"). Jay recognizes that provisions of these statutes and the rules promulgated pursuant to them may conflict. Jay resolves the conflict by adopting provisions that are as consistent as possible with the applicable state or federal provision and the mandate to prevent water pollution, air contamination, health and welfare hazards, and nuisances. In addition, this Chapter contains standards that Jay finds reasonable, including, without limitation, standards in conformance with federal and state solid waste rules; and standards concerning traffic safety; levels of noise heard outside the facility, distance from residential,

## CHAPTER 9

commercial or institutional uses, groundwater protection, surface water protection, beneficial use of secondary solid waste materials, erosion and sedimentation control, and compatibility of the solid waste facility with local zoning and land use controls. These standards, and those adopted governing the hydrogeological criteria for siting and design of solid waste disposal facilities and engineering criteria related to waste handling and disposal areas, are not more strict than those contained in ME statutes, including 38 M.R.S.A. §480-A et seq. and 481 et seq., and the rules adopted and consistent with these statutes. See 38 M.R.S.A. §1310-U. Jay is committed to preventing the degradation or destruction of natural resources, minimizing the adverse impact of a solid waste facility on the natural environment and protecting the health, safety and general welfare of all people. See 38 M.R.S.A. §480-A and §481.

C. This Ordinance shall be interpreted to effectuate these intents and objectives.

*Twenty-First, Sec. 20.*

## **PART 2**

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### **SHORT TITLE AND DEFINITIONS**

Section

§9-201 Short Title

§9-202 Definitions

#### **§9-201 SHORT TITLE**

This Chapter shall be known and may be cited as “**Jay Environmental Control and Improvement Ordinance, Solid Waste Facilities.**”

#### **§9-202 DEFINITIONS**

- A. For the purposes of this Chapter, the terms and definitions set forth in ME Rules Chapter 400, Sections 1.A-through L.L.II are hereby adopted and incorporated herein by reference except those terms specifically not adopted in this section and those terms defined in § 9-202(B) and § 1-201. The references ME Rules Chapter 419 in ME Rules Chapter 400, Sections 1.B I.D shall not be adopted or incorporated herein by reference. The following definitions in ME Rules Chapter 400 are not be adopted or incorporated herein by reference; Paragraphs H., I., P., U., A.A., F.F., H.H., L.L., O.O., Q.Q., U.U., V.V., W.W., P.P.P., Q.Q.Q., C.c., U.u., Z.z., M.m.m., P.p.p., Q.q.q. and J.J.j.j. The term “ME Rules” used throughout this document shall mean ME Dept. of Envntl Prot. Maine Solid Waste Management Rules Chapter 400, and Chapter 401, as amended November 2, 1998 and amended September 6, 1999 and Chapter 405 repealed and replaced November 2, 1998 and amended September 6, 1999.
- B. In addition to the general definitions contained in § 1-201 for purposes of this Chapter, the following terms shall have the following meaning, unless the context indicates otherwise.

1. **Alter.** "Alter" means to change the capacity, horizontal or vertical boundaries, siting, design, construction or operation of a solid waste facility or activity in any way from that previously approved by the Department.
2. **Amendment.** "Amendment" means a modification to a license that would permit a solid waste facility to increase capacity of the solid waste facility; alter the horizontal and vertical boundaries, siting, design, construction or operation of the solid waste facility; or alter the nature of an activity to an extent that would require the Department to modify any findings with respect to any of the licensing criteria. Amendments do not include minor revisions and other alterations.
3. **Assessment Monitoring.** "Assessment monitoring" means monitoring conducted to verify water quality and/or to assess the nature and extent of a release of contaminants to ground or surface water or air.
4. **Buffer Strip.** "Buffer strip" means an area of land that is covered by vegetation, capable of regeneration and succession, retained as undisturbed vegetation. A buffer strip runs along the border between the solid waste facility site and an adjacent piece of land, body of water, or other specified area and serves to protect that area from adverse effects of the solid waste facility or preserves some existing quality or use in the area of development.
5. **Commercial Solid Waste Landfill.** "Commercial solid waste landfill" means a privately owned solid waste facility that accepts waste from another for consideration and is used for the management of solid waste generated by persons who do not own or operate the solid waste facility. The term does not include a solid waste facility owned, controlled, operated or used exclusively by:
  - a. A public solid waste disposal corporation under section 1304-B, subsection 5;
  - b. A municipality under section 1305;
  - c. A refuse disposal district under Chapter 17;
  - d. The agency under Chapter 24;
  - e. The person generating the solid waste disposed of at the solid waste facility, except that the solid waste facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average that is not generated by the owner. A solid waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph; or
  - f. A private corporation that accepts material-separated refuse-derived fuel as a supplement fuel and does not otherwise burn waste other than its own.
6. **Construction and Demolition Debris.** "Construction and demolition debris" means debris resulting from construction, remodeling, repair, and demolition of structures. It excludes asbestos and other special wastes.

## CHAPTER 9

7. **Contamination.** As applied to ground water and surface water, "contamination" means exceeding water quality standards specified in:
  - a. Primary Drinking Water Standards adopted under Title 22 Section 2611;
  - b. Maximum Exposure Guidelines adopted by the State of Maine;
  - c. A statistically significant increase or change in concentration of measured parameters above established background or baseline, whether or not the existing concentration already exceeds the maximum concentration levels specified above, using the 95% Confidence Interval when the student's t test is applied. The use of other statistical tests and confidence intervals shall be approved by the Board.
8. **Department.** "Department" means the Maine Department of Environmental Protection.
9. **Detection Monitoring.** "Detection monitoring" means monitoring conducted periodically throughout the active life of the solid waste facility, and through the closure and post-closure periods, to detect changes in air and water quality. Significant changes in air or water quality may trigger assessment monitoring as required by the Board.
10. **Disposal.** "Disposal", means the discharge, deposit, dumping, incineration, spilling, leaking, or placing of any hazardous, biomedical or solid waste, waste oil, refuse derived fuel, sludge or septage into or on any land, air or water so that the hazardous, biomedical or solid waste, waste oil, refuse derived fuel, sludge or septage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.
11. **Environmental Monitoring.** "Environmental monitoring" means collecting and analyzing ground and surface water samples, leachate, leak detection and leachate treatment residue samples, air samples, solid waste landfill gas samples and/or measurements, waste characterization, monitoring of solid waste settlement and slope stability, monitoring solid waste landfill for erosion, vegetative stress and storm water runoff/runoff.
12. **Existing hourly sound level.** "Existing hourly sound level" means the hourly sound level at a solid waste facility, at protected locations, at a specific location or at an abutting property line prior to the first expansion of that solid waste facility.
13. **Expand.** "Expand" means to dispose of solid waste beyond the horizontal and vertical boundaries and volumes previously licensed by the Board for solid waste disposal, except when allowed as part of a Board approved closure activity. "Expand", as it applies to solid waste incineration facilities, means to significantly increase the licensed disposal capacity of the solid waste facility.
14. **Friable Asbestos.** "Friable asbestos" means any material containing more than one percent (1%) asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. It shall also include non-friable asbestos that has been crushed, crumbled, pulverized or reduced to powder by any means during the course of dismantling, handling, or transporting the non-friable waste.

- 15. Inert fill.** "Inert fill" means clean soil material, including soil from road ditching; rock; bricks; crushed clean glass or porcelain; and cured concrete; that are not mixed with other solid or liquid waste, and are not derived from an ore mining activity or winter sand cleanup.
- 16. License.** "License" shall have the same definition as "Permit".
- 17. MBEP.** "MBEP" means the Maine Board of Environmental Protection.
- 18. Multifuel Ash.** "Multifuel Ash" is ash generated from combustion of the following fuels: wood, paper, pulp and paper sludge, coal, oil and tire chips
- 19. Non-friable asbestos.** "Non-friable asbestos" means any material containing more than one percent (1%) asbestos by weight that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure, or which has not been crumbled, pulverized or reduced to powder by any means.
- 20. Ordinance.** "Ordinance shall mean the Jay Environmental Control and Improvement Ordinance".
- 21. Pollutant.** "Pollutant" means dredged spoils, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic commercial or agricultural wastes of any kind, or any constituent thereof.
- 22. Receptor.** "Receptor" shall mean any land area, surface water, ground water, person or persons, natural environment, air mass, or natural resources or combination thereof that can be impacted by contamination from a solid waste facility.
- 23. Sand and gravel deposit.** "Sand and gravel deposit" means a surficial geological formation such as an esker, outwash plain, glaciomarine delta, kame, stratified moraine or other stratified deposits commonly consisting of sand and/or gravel.
- 24. Secondary Material.** "Secondary material" means a solid waste, separated from other solid wastes that may be suitable for beneficial uses. The secondary material may be a product having a solid waste as a constituent.
- 25. Solid waste landfill or landfill.** "Solid waste landfill or landfill" means a discrete area of land or an excavation used for the permanent disposal of solid waste. This term does not include land application sites used in programs approved by the Department.
- 26. Special waste.** "Special waste" means any solid waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:
- a. Oil, coal, wood and multi-fuel boiler and incinerator ash;

## CHAPTER 9

- b. Industrial and industrial process waste;
- c. Waste water treatment plant sludge, paper mill sludge and other sludge waste;
- d. Debris and residuals from non-hazardous chemical spills and cleanup of those spills;
- e. Contaminated soils and dredge materials;
- f. Asbestos and asbestos-containing waste;
- g. Sand blast grit and non-liquid paint waste;
- h. High and low pH waste;
- i. Spent filter media residue; and
- j. Shredder residue and other waste designated by the Board, by rule,

**27. Successful corrective action.** "Successful corrective action" means that, at a solid waste facility which has previously been found to be contaminating waters of the State, the owner or operator has developed and implemented a Corrective Action Plan and Corrective Action Monitoring Program at that solid waste facility and the Board has found that:

- a. The owner/operator has stopped, contained and eliminated the discharge of contaminants attributable to the solid waste facility;
- b. The owner/operator has modified the solid waste facility's detection monitoring program to include all parameters detected during assessment monitoring to monitor ground water not captured by the corrective action;
- c. The owner/operator is monitoring the hydraulic conditions and capture of contaminants that will allow ground water quality downgradient of the corrective action to improve;
- d. The owner/operator has documented an actual trend of improving water quality in previously contaminated waters and has demonstrated that the trend will continue. The demonstration must be supported by the use of modeling and corrective actions in conjunction with hydrogeologic data showing capture of the plume, diversion of flow paths and/or reversal of flow paths; and
- e. Contaminants previously released from the solid waste facility are mitigated and do not pose a threat to public health, safety and the environment.

**28. Water Quality Deterioration.** "Water Quality Deterioration" shall mean a change in water quality data results that appear significant after considering historical variations and any acute events that might have triggered a long term or short-term water quality change.

**29. Wood Waste.** “Wood Waste” means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash and sawdust, which are not mixed with other solid or liquid waste, but does not include flume grit.

C. For all provisions of the Ordinance, including those provisions incorporated by reference from the ME Rules, Chapter 400, 401 and 405 the definitions contained in this Section and § 1-201 shall apply.

*Twenty-First, Sec. 21. Twenty-Second, Sec. 36.*

**PART 3**  
**PROHIBITIONS, EXEMPTIONS, MODIFICATIONS AND SAVING**  
**CLAUSE**

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Section

- §9-301 General Prohibitions
- §9-302 Exemptions
- §9-303 Modifications
- §9-304 Adoption by Reference
- §9-305 Savings Clause

**§9-301 GENERAL PROHIBITIONS**

A. No person may operate any solid waste facility in a manner contrary to this Ordinance or without a permit issued by the Board pursuant to this Ordinance.

B. No person may locate, establish, construct, alter or operate a new solid waste facility, or alter or expand the disposal capacity of an existing solid waste facility without a permit issued by the Board pursuant to this Ordinance. Except as specified in the Jay Solid Waste Facility Permit, the provisions of the permit shall apply to the entire solid waste facility, both existing and proposed.

C. Notwithstanding the prohibitions in subsections A and B above, this Chapter does not regulate the disposal of hazardous waste as defined in 38 M.R.S.A. Section 1303-C.15 or the disposal of biomedical waste as defined in 38 M.R.S.A. Section 1303-C.1.a.

D. No person may locate, establish, construct, expand or operate a wood waste facility without a permit issued by the Board pursuant to this Ordinance.

E. No person may construct or close a facility using beneficial use secondary materials without a permit issued by the Board pursuant to this Ordinance.

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### §9-302 EXEMPTIONS

- A. This Chapter applies to facilities subject to ME Rules Chapter 400, 401 and 405 except that the disposal of cull potatoes is exempt and shall not be adopted or incorporated herein by reference.
- B. As provided in 38 M.R.S.A. 2173 and notwithstanding any other provision of this Ordinance, Jay Solid Waste Facility permit issued to a solid waste facility owned by the former Maine Waste Management Agency, the State Planning Office or a regional association as defined in 38 M.R.S.A. 1303-C.24. shall contain the same findings, conclusions, and conditions contained in the license issued by the Department. A Jay Solid Waste Facility permit may also contain additional conditions for the operation of such a solid waste facility relating to issues not specifically addressed in any condition of the Department's license, provided the additional conditions do not unreasonably restrict the operation of the solid waste facility and the conditions are attached to a Jay Solid Waste Facility permit within 90 days of issuance of the Department's license or within 30 days of a final decision by the Department to relicense the solid waste facility.

### §9-303 MODIFICATIONS

- A. The rules of this Chapter apply only to solid waste facilities subject ME Rules Chapter 400 except that Section 2.C. through Section 2.I., inclusive, Section 3.A., Section 3.B.(1)(b), Section 3.B.(1)(c), Section 3.B.(3), Section 3.D. through Section 3.F. inclusive, Section 4.E.(2)(a)(iii), Section 7, Section 8, Section 10, Section 12.B, Section 13, Appendix B and Appendix C of Chapter 400 shall not be adopted or incorporated herein by reference.
- B. The rules of this Chapter apply only to solid waste facilities subject to ME Rules Chapter 401 except that Section 1.C.(1)(c), Section 1.C.(1)(d), Section 2.D.(2), Section 4.A., Section 4.C.(10), Section 4.C.(13) through 4.C.(17) inclusive, Section 4.C.(21) Section 6.B.(1) through Section 6.B.(4), Section 6.B.(6) through Section 6.B.(9), Section 6.C., Section 6.D., Section 7.C. and Section 8 of Chapter 401 shall not be adopted or incorporated herein by reference.
- C. The rules of this Chapter apply only to solid waste facilities subject to ME Rules Chapter 405 except that the disposal of cull potatoes is exempt from this Chapter and except that Section 2.C.(2)(d), Section 2.C.(2)(i), Section 2.C.(2)(j), Section 2.C.(3)(c), Section 2.D.(5), Section 4, and Section 6.C.(4)(f) of Chapter 405 shall not be adopted or incorporated herein by reference.
- D. For the purposes of this Chapter, and in addition to other modifications contained in this Chapter and Ordinance, ME Rules Chapter 400, 401, 405 and 418 are modified as follows: :
1. Section 400.3
    - a. Modify Section B(1)(a) by changing references " of Chapter 400 and the relevant solid waste disposal facility chapters (Chapters 401 through 419, inclusive)" to read "Chapter 3 and Chapter 9, Part 4 of the Ordinance".
    - b. Modify Subsection B.(1)(a) by including the phrase "renewal license for solid waste facilities" in the second sentence after the phrase "expanded solid waste disposal facilities".

- c. Modify Subsection C.(6) by deleting the phrase "and must include the certification required in Chapter 2, Section 7.E."
- 2. Section 400.4
    - a. Modify Subsection A.(2) by deleting the reference "as provided in Chapter 2, Section 7.D."
    - b. Modify Section E. by deleting the words "adequately" and "adequate" in all parts of this Section.
    - c. Modify Sections E., F., G., H., I., J., K., L. and M. by deleting the words "unreasonable" and "unreasonably" in all parts of these Sections.
    - d. Modify Subsections F.(1), G.(1), H.(1)(a), H.(1)(b), H.(1)(c), H.(1)(d), I.(1), K.(1), K.(1)(a), K.(1)(b), K.(1)(c), and L.(1), by changing "may" to read "must" in all parts of these Subsections.
    - e. Modify Subsections M.(1), M.(1)(a) and M.(2)(b) by changing "may" to read "will" in all parts of these Subsections.
    - f. Modify Section F.(2) by changing the phrase "subsection 400.1" to read "§ 9-202 of the Ordinance".
    - g. Modify Subsection H.(1)(c) by changing the phrase "Chapter 502 of the Department Rules" to read "DEP's Chapter 502".
    - h. Modify Subsection H.(2)(a) by changing the phrase "Chapter 500" to read "DEP's Chapter 500".
  - 3. Section 400.11
    - a. Modify Section A.(1) by changing the phrase "Chapter 401, section7" to read "§ 9-408 of the Ordinance".
    - b. Modify Section A.(4)(d)(ii) by deleting the second sentence.
    - c. Modify Section B.(1) by changing the phrase "Chapter 401, section7" to read "§ 9-408 of the Ordinance".
    - d. Modify Section B.(4)(b) by deleting the second sentence.
  - 4. Section 401.1
    - a. Modify Section A. by deleting the reference "and permit by rule facilities disposing of cull potatoes", and the second last sentence in the second paragraph.
    - b. Modify Section A. by changing the reference "Chapter 400 and this Chapter" to read "Chapter 9, Part 4 of the Ordinance".
    - c. Modify Section A. second paragraph by deleting the second sentence .
    - d. Modify Section B. by deletion of the word "unreasonable" and inserting the word "a".
    - e. Modify Section C.(1) by changing the reference "Chapter 400, Section4" to read "§ 9-401.B of the Ordinance".
    - f. Modify Section C.(1)(a) by changing "may" to read "will".
    - g. Modify Section C.(2)(a), C.(2)(b), C.(2)(c), C.(2)(d), C.(3)(a), C.(3)(b), C.(3)(c), C.(3)(d), C.(3)(e) and C.(3)(f) by changing "must" or "may" to read "will".
    - h. Modify Section C.(3) by changing the reference "Chapter 400, Section13" to read "§ 9-403.F of the Ordinance".
    - i. Modify Section D.(5) by changing the reference "of Chapter 500" to read "of DEP's Chapter 500".
    - j. Modify Section C.(3)(c) by deleting the reference "(See Chapter 405 for detailed monitoring requirements.)".

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- k. Modify Section D.(1) by changing the reference "Chapter 405" to read "§ 9-602.S of the Ordinance".
  - l. Modify Section E., by deleting the last sentence.
5. Section 401.2
- a. Modify Section 401.2. by changing the first sentence in the first paragraph reference "Chapter 400 and this Chapter" to read "§ 9-401 and § 9-402 of the Ordinance".
  - b. Modify Section A.(1) by including "and setback distances" at the end of the first sentence and replacing the word "and" before the words "man-made features" with a comma.
  - c. Modify Section A.(2) to include "Aerial photograph coverage should match mapping".
  - d. Modify Section B.(2)(b) by changing the reference "Chapter 405" to read "§ 9-602S of the Ordinance".
  - e. Modify Section C.(2) by deleting the word "sensitive".
  - f. Modify Section C.(2) by deleting the phrase "for purposes of assessing the need for improvement allowances" and " the imported soils processed in conjunction with at least one of the improvement allowances in Table 1 [See Section2.D.(2)]".
  - g. Modify Section D. by changing the last sentence in the first paragraph reference "Chapter 400, Section13" to read "§ 9-403.F of the Ordinance".
  - h. Modify Section E. by changing the second sentence in the first paragraph reference "Chapter 400, Section13" to read "§ 9-403.F of the Ordinance".
  - i. Modify Section F.(5)(e)(iv) by changing the reference "Chapter 405" to read "§§ 9-602.J, K and S of the Ordinance".
  - j. Modify Section F.(9) by deleting the phrases "and Burn", "and/or a burn area for wood wastes and/or wood from construction/demolition debris as part of the solid waste disposal facility site," and "and burn".
  - k. Modify Section F.(9) by changing the reference "Chapter 402 section2 and 4" to read "Chapter 402, Sections2 and 4 of the Rules of the MBEP, as amended effective November 2, 1998 and September 6, 1999".
  - l. Modify Section F.(10)(b) by changing the reference "Chapter 405" to read "§9-403.C.2. of the Ordinance".
  - m. Modify Section F.(11) by changing the phrase "Chapter 400, section4.J" and "Chapter 400, Section 4.M" to read "§ 9-401.B. Section 4.J of this Chapter" and "§ 9-401.B. Section 4.M. of this Chapter" respectively.
  - n. Modify Section G. by deleting the word "an unreasonable" in the first paragraph, second and inserting the word "a".
  - o. Modify Section G. by deleting "engineered systems" in the first paragraph, first sentence and inserting "the solid waste boundary".
  - p. Modify Section G. by deleting the word "sensitive" before receptor(s) in all locations.
  - q. Modify Section G. by deleting the last sentence in the first paragraph.
  - r. Modify Section G.(1)(b) by deleting "engineered containment systems" and inserting "the solid waste boundary".
  - s. Modify Section K. by changing the reference "Chapter 405" and the phrase "Section 2 of Chapter 405" to read "§ 9-602.S.3" and read "§ 9-602.S. of the Ordinance", respectively.
  - t. Modify Section L. by changing the reference of "Section 4" to read "§ 9-602.A. of the Ordinance".
  - u. Modify Section L. by changing the reference "Section 4.A.(1)" to read "§ 9-602.L.1. of the Ordinance".
6. Section 401.4

- a. Modify Section C.(1)(b) by changing the reference "Chapter 400 of these Rules and Chapter 2 of the Department Rules" to read "Chapter 9, Part 4 of the Ordinance".
- b. Modify Section C.(1)(b)(v) by changing the reference "Chapter 405 Section 4" to read "§ 9-403.C.2".
- c. Modify Section C.(3) by changing the reference "of Chapter 402, Section 4.I" to read "of Chapter 402, Section 4.I of the Rules of the MBEP, as amended effective November 2, 1998 and September 6, 1999".
- d. Modify the NOTE: portion shown below Section C.(7) by changing the phrase "Chapter 400, section 1 of these Rules" to read "§ 9-202 of the Ordinance".
- e. Modify Section C.(9) by changing the first sentence reference "Chapter 400, Section 4.J." to read "§ 9-401.B Section 4.J. of this Chapter".
- f. Modify Section C.(9) by changing the second to the last sentence reference "Chapter 400, Section 4.M." to read "§ 9-401.B Section 4.M. of this Chapter".
- g. Modify Section C.(12)(a), (b), (c), (d), and (e) by deleting the phrase "is/are performing as designed" and inserting after "The" the phrase "integrity and performance of the".
- h. Modify Section C.(22) second paragraph by changing the phrase "subsections 1 through 21" to read "Subsections 1 through 9, 11, 12, 18, 19 and 20 as modified".
- i. Modify Section D. by changing the phrase "Chapter 400, section 3.E" to read "Chapter 3 of the Ordinance".
- j. Modify Section D.(3) last sentence by changing the reference "Chapter 400" to read "Chapter 9, Part 4 of the Ordinance".
- k. Modify Section D.(5) by changing the reference "Chapter 400, Section 11" to read "§ 9-701 of the Ordinance".

7. Section 401.5

- a. Modify the phrase in the first paragraph "Chapter 400" to read "Chapter 9, Part 4 of this Ordinance".
- b. Modify Section B.(2) by deleting the second paragraph in its entirety.
- c. Modify Section D. by changing the reference "Chapter 400, Sections 3, 4.B., 4.C., 4.J., and 4.M., 10 and 11" in the first paragraph to read "§ 9-401.B, 4.B., 4.C., 4.J., and 4.M.; § 9-406; § 9-602.S.4.; § 9-701 and § 9-801.A and 11".
- d. Modify Section D.(1)(a) by changing the reference "Section 6 of this Chapter" to read "§ 9-801 of the Ordinance".
- e. Modify Section E. by changing the references "Chapter 405" in the first and second paragraph to read "§ 9-602.S. of the Ordinance".
- f. Modify Section F.(6) by changing the reference "Section 6" to read "§ 9-801" of the Ordinance.
- g. Modify Section G. by deleting in the first paragraph the phrase "or through a request for a variance pursuant to the provisions of Chapter 400, Section 13" in its entirety.
- h. Modify Section G.(2)(g)(v) by deleting the second paragraph in its entirety.
- i. Modify Section H. by deleting the second sentence in the first paragraph in its entirety.
- j. Modify Section I.(7) by changing the references "Chapter 400, Section 4.J." and "of Chapter 400, Section 4.M" to read "§ 9-401.B., Section 4.J." and " of § 9-401.B., Section 4.M.", respectively.

8. Section 401.7

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- a. Modify Section B. by deleting the phrase "in addition to the facilities listed in Chapter 400, section 2".
  - b. Modify Section D.(1) by changing the phrase "Chapter 400, section 4" to read "§ 9-401.B. of the Ordinance".
  - c. Modify Section D.(2) first paragraph, Sections D.(2)(a), D.(2)(b), D.(2)(c), D.(2)(d), D(2)(e) and D(2)(f) by changing "must" or "may" to read "will".
  - d. Modify Section D.(2)(d) by changing the reference "Chapter 400" to read "§ 9-202 of the Ordinance".
  - e. Modify Section D.(3) by changing the reference "Chapter 400, section 13" to read "§ 9-403.F. of the Ordinance".
  - f. Modify Section D.(3)(a), D.(3)(b), D.(3)(c) and D.(3)(e) by changing "must" or "may" to read "will".
  - g. Modify Section D.(4), D.(4)(b), D.(4)(c), D.(4)(d), D.(5), D.(5)(a) and D.(5)(b) by changing "must" or "may" to read "will".
  - h. Modify Section D.(5) by changing the reference "Chapter 405" to read "§ 9-602.S.5. of the Ordinance".
  - i. Modify Section E. first paragraph by deleting the second last sentence in the first paragraph.
  - j. Modify Section F. by changing the reference of "Chapter 400" to read "Chapter 9, Part 4 of the Ordinance".
  - k. Modify Section F. by changing the references "Chapter 400, Sections 4.E., 4.G. and 4.K." to read "§ 9-401.B. of the Ordinance".
  - l. Modify Section F.(2)(e) by deleting the phrase "and Burn" and "and/or a burn area for wood wastes and/or wood from construction/demolition debris as part of the solid waste disposal facility site".
  - m. Modify Section F.(2)(e) by changing the phrase "Chapter 402 and Sections 2 and 4" to read "Chapter 402, Sections 2 and 4 of the Rules of the MBEP, as amended effective November 2, 1998 and September 6, 1999".
  - n. Modify Section F.(2)(f) by changing the phrase "Chapter 400, Section 4.J" and "Chapter 400, section 4.M" to read "§ 9-401.A Section 4.J." and read "§ 9-401.A Section 4.M." respectively.
  - o. Modify Section F.(2)(g) by changing the reference "Chapter 405" to read "§ 9-602.S.2. of the Ordinance".
  - p. Modify Section H.(3) by changing the phrase "Chapter 400, Section 9" to read "§ 9-602.E. of the Ordinance".
  - q. Modify Section H.(7) by changing the phrase "Chapter 400, Section 4.J." and "Chapter 400, Section 4.M." to read "§ 9-401.A. Section 4.J." and read "§ 9-401.A. Section 4.M." respectively.
  - r. Modify Section H.(19) by changing the reference "Chapter 402, Section 4.I." to read "Chapter 402 Section 4.I. of the Rules of the MBEP as amended effective November 2, 1998 and September 6, 1999".
  - s. Modify Section H.(21) by changing the reference "Chapter 400, Section 3.E." to read "Chapter 3 of the Ordinance".
  - t. Modify Section J.(8) by changing the reference "Chapter 400" to read "Chapter 9, Part 4 of this Ordinance".
9. Section 405.1
- a. Modify Section B.(1) by changing the reference "Chapter 401 Sections 1 through 7" to read "Chapter 9, Part 4 of this Ordinance".
  - b. Modify Sections B.(1) by deleting the second sentence.

## 10. Section 405.2

- a. Modify Section A.(2)(f)(iii) by changing the phrase "where possible" to read "as applicable".
- b. Modify Section A.(3)(a)(i) by changing the reference "Appendix 405.B" to read "§ 9-602.S of the Ordinance".
- c. Modify Section B. by deleting the word "classified" in the first sentence.
- d. Modify Section B.(2)(d) by changing the phrase "where possible" to read "as applicable".
- e. Modify all references in Section C. to the phrase "is found in Appendix 405" and Section C(1)(b) "for the Appendix 405.A. Column 2 parameter" to read "will be as approved by the Board" and "for the parameters approved by the Board," respectively.
- f. Modify Section C.(1)(b) by deleting the last sentence.
- g. Modify Section C.(2)(a) by changing the reference "listed in Column 1 of Appendix 405.A plus any Column 2" to read "approved by the Board plus any".
- h. Modify Section C.(2)(b) by changing the reference "listed in Appendix 405.A, Column 1 plus Column 2" to read "by the Board plus any".
- i. Modify Section C.(3)(d) by deleting "as defined in CMR 400, Section 1".
- j. Modify Section D. by deleting the phrase "including the two assessment monitoring events" in the first paragraph, second sentence.
- k. Modify Section D. by deleting the sentence "The corrective actions must be designed to minimize the discharge of pollutants from the solid waste disposal facility" in the first paragraph and insert the sentence "The corrective action must be designed to mitigate or eliminate the discharge of contaminants from the solid waste disposal facility".
- l. Modify Section D.(2) by deleting the word "reduce or".
- m. Modify Section D.(2) by deleting the phrase "to the maximum extent practicable, releases of Appendix 405.A. Column 3" in its entirety.
- n. Modify Section D.(2)(b) by deleting the word "protection" and inserting "mitigation".
- o. Modify Section D.(3)(a)(i) by deleting the phrase "reduce further" and insert "mitigate".
- p. Modify Section D.(3)(b) by deleting the sentence in its entirety and inserting "A schedule for implementation of the proposed Corrective Action Program".

## 11. Section 405.3

- a. Modify Section A.(5) by revising the word "fifth" to read "eighth".
- b. Modify Section B. by revising the reference "as Appendix 405.C" to read "in 40 CFR Part 258.53(h)".

## 12. Section 405.5

- a. Modify Section G.(2) by changing the phrase "of the Appendix 405.A Column 3 parameters" to read "of parameters approved by the Board".

## 13. Section 405.6

- a. Modify Section B.(1)(c) by changing the phrase "Appendix 405.E" to read "Appendix E".
- b. Modify Section C.(4)(a) by changing the reference "Section 6.B.(2)" to read "§ 9-602.S.8.a. and § 9-602.S.8.b. of the Ordinance".
- c. Modify Section D. by deleting the third sentence in its entirety.

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- d. Modify Section D.(2)(f) by deleting "in Chapter 419, Section 6.D.(1)" in its entirety in the first sentence.
  - e. Modify Section D.(2)(j) and Section D.(2)(l) by changing the reference "Appendix 405.D" to read "Appendix D".
  - f. Modify Section D.(2)(n) by changing the reference "Appendix 405.E" to read "Appendix E".
- E. If a conflict exists between an Ordinance provision and the ME Rules, Chapter 400, 401 or 405 the Ordinance prevails.

### **§9-304 ADOPTION BY REFERENCE**

- A. To the extent practicable, and except as modified in this Ordinance, including Section 9-303, and except to the extent they are inconsistent with state and federal law, as authorized by 30-A M.R.S.A. §3003(2), ME Rules 400, 401 and 405 are specifically adopted and incorporated into this Chapter by reference. As used in this Chapter, any reference to the "Board", "Department" or "Commission" in any provision of the ME Rules adopted by reference herein shall mean the "Board" as defined in §1-201 of Chapter 1 of this Ordinance.

### **§9-305 SAVINGS CLAUSE**

- A. In addition to and except as stated in §1-107 and 1 M.R.S.A. §302, any Permit issued pursuant to the repealed Chapter 9 shall remain in full force and effect subject to the law, including the Ordinance, that was in effect at the time of the issuance. In the event that a provision in this Ordinance, including this Chapter, conflicts with the ME Rules, the provisions of the Ordinance shall apply, consistent with §9-101.

## **PART 4**

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### **JAY SOLID WASTE FACILITY PERMIT AND WOOD WASTE FACILITY PERMIT**

#### Section

- §9-401 Solid Waste Facility Permit Criteria
- §9-402 Application--General
- §9-403 Application--Specific
- §9-404 Conditions of Jay Solid Waste Facility Permit
- §9-406 Liability Insurance
- §9-408 Wood Waste Facility Criteria

**§9-401 SOLID WASTE FACILITY PERMIT CRITERIA****A. General Permit Criteria .**

1. No person may locate, establish, construct, expand, or operate any solid waste facility or construct or close a solid waste facility using beneficial use secondary materials unless a permit is issued by the Board under provisions of this Chapter.
2. The Board shall not issue a permit unless it finds that the solid waste facility or the beneficial use secondary material construction activity will not pollute any water, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance.
3. The facility must satisfy all applicable requirements of this Chapter and the Ordinance.

**B. Specific Solid Waste Facility Requirements.** The permit criteria set forth in ME Rules Chapter 400, Section 4. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

**§9-402 APPLICATION--GENERAL**

A. Application for a Jay Solid Waste Facility Permit shall be made in accordance with Chapter 3 of this Ordinance and contain such additional information relating to the solid waste landfill or beneficial use secondary material construction activities as required in this Part 4.

B. In addition to the information required in § 3-101 and § 9-403, persons applying for a Jay Solid Waste Facility Permit shall comply with the following:

1. The Applicant shall submit an original and four (4) copies of the application for a Jay Solid Waste Facility Permit on a form which shall be furnished by the Board.
2. The Applicant proposing to construct, alter or expand a solid waste facility or construct or close a solid waste facility using beneficial use secondary materials shall submit the following information on a form which shall be furnished by the Board:
  - a. Name and address of applicant.
  - b. Name and address of the owners of the site (if other than applicant).
  - c. If applicant is a corporation, state whether the corporation is authorized to do business in Maine, and attach a copy of a current Certificate of Good Standing from the Secretary of State of Maine.
  - d. Name of applicant's authorized representative.
  - e. Name, address and number of Registered Professional Engineer, or Land Surveyor and other professionals who aided in preparing the application.
  - f. Address to which all correspondence from the Board should be sent.

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- g. The nature of the applicant's real estate interest in the site (option, land purchase contract, recorded ownership, etc.) and a copy of the instrument creating the applicant's interest.
  - h. Name and mailing addresses of property owners abutting the site.
  - i. A narrative description of the beneficial use secondary material construction activity and operations if applicable. A detailed narrative description of the solid waste facility and its operation detail.
  - j. Accurate and complete cost estimates for the solid waste facility.
  - k. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the uses for which the funds may be utilized.
  - l. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution indicating the amount of funds and their specified uses.
  - m. The most recent corporate annual report indicating availability of sufficient funds to finance the development together with explanatory material interpreting the report, when requested.
  - n. A statement of the Applicant's prior experience or appropriate training, or both, relating to the construction and operation of a solid waste facility or in construction using beneficial use secondary materials.
  - o. Any other information that the Applicant determines will assist the Board in making its evaluations and its findings.
- C. An application for a solid waste facility permit shall not be deemed acceptable for processing until all information and data required to evaluate the application have been submitted. The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further relevant information and data.
- D. Terms of Jay Solid Waste Facility Permit:
- 1. A Jay Solid Waste Facility Permit shall remain in effect unless modified, revoked, or suspended. Permittees shall comply with applicable operating requirements, including annual reporting requirements.
  - 2. Approval to construct, alter or expand the solid waste facility or construct using beneficial use secondary material shall not relieve any person of the responsibility to comply fully with application provisions of all other parts of this Ordinance or other Jay Ordinances or State or Federal law.
- E. Any duly authorized representative or employee of the Board or the Town of Jay may, upon presentation of appropriate credentials, at any reasonable time of day before, during and after construction:

1. Enter any establishment or other place which is not a residence, or any conveyance, where or in which solid waste or beneficial use secondary materials are generated, handled, disposed or placed.
2. Inspect the property and/or inspect or obtain samples of any solid waste or beneficial use secondary materials including samples from any conveyance in which solid waste or beneficial use secondary materials are being or have been transported as well as samples of any solid waste containers or labels.
3. Inspect and copy any records, reports, information or test results relating to solid waste or beneficial use secondary material.
4. Take photographs or measurements of the solid waste facility or beneficial use construction activities and operations.
5. Obtain samples of the construction materials.
6. Conduct environmental monitoring.

*Twenty-Second, Sec. 37.*

### **§9-403 APPLICATION--SPECIFIC**

**A. Qualifications of a Person Preparing the Application.** For the purposes of this subsection, the provisions of ME Rules Chapter 400, Section 3.C.(5) , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303. Laboratory analysis required in support of permitting, construction, operation, closure or post-closure monitoring and maintenance shall be performed by a qualified laboratory.

**B. General Licensing Requirements.** For purposes of this subsection, the provisions of ME Rules Chapter 401, Section 1 are hereby adopted and incorporated herein by reference as modified in this Ordinance, including § 9-303.

**C. Applicants Requirements.** The information from this Chapter shall be submitted to the Board as part of a completed application to construct, alter or expand a solid waste facility along with the following:

- 1. Required Information.** For purposes of this subsection, the provisions of ME Rules Chapter 401.2 are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 §-.
- 2. Solid Waste Characterization Program.** For purposes of this subsection, the provisions of ME Rules Chapter 405, Section 6 and ME Rules Chapter 401 Section 2.F(10), are hereby adopted and incorporated by reference, provided however, that the reference to "Chapter 405" in Chapter 401 Section 2.K. shall read "§ 9-403C.1 of this Chapter".
- 3. Environmental Monitoring Program.** All applicable information as required in § 9-602.S. of this Chapter.

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**4. Operations Manual.** A copy of the operations manual as required pursuant to ME Rules Chapter 401. Section 2.L., adopted and incorporated herein by reference, and § 9-602L of this Chapter, as complete as possible recognizing that certain information may not be available at the time of application.

**5. Compliance Record.**

a. The full name, business address, home address, date of birth, social security number and/or Federal Employer Identification number of the applicant; (or if the applicant is a business concern, of any officers, directors, partners, supervisory employees with respect to the proposed solid waste operations) and all persons or business concerns holding more than 5 percent of the equity in or debt liability of that business (unless the debt liability is held by a charter lending institution).

b. The full name and business address of any company which collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which the applicant holds an equity interest.

c. A listing and explanation of any felony convictions, any criminal convictions of environmental laws, and any adjudicated civil violation of environmental laws administered by the MBEP, the State of Maine, other States, the United States, or another country in the 10 years immediately preceding the filing of the application.

d. A listing and explanation of any ongoing court proceeding or any ongoing administrative enforcement action not already provided under subsection (c) in which the person is a party and which concerns environmental laws administered by the MBEP or the State of Maine.

e. A listing of any agencies outside of Maine which have regulatory responsibilities over the applicant in connection with its collection, transportation, treatment, storage or disposal of solid or hazardous wastes;

f. Any other information required by the Board that relates to the character of the applicant; and

g. A listing and explanation of administrative consent agreement or consent decrees entered into by the applicant or the operator for violations of environmental laws administered by MBEP, the State of Maine, other states, the United States or another country in the 10 years immediately preceding the filing of the application.

**6. Closure and Post-Closure Monitoring and Maintenance.** All applicable information as required in § 9-701 and § 9-801 of this Chapter.

**D. Initial Permits and Permit Renewals.** Applications for an initial Jay Solid Waste Facility Permit for an existing solid waste facility licensed by MBEP or the Department and at which no construction, alteration or expansion of the solid waste facility is proposed, and applications for a permit renewal required pursuant to § 1-106 of this Ordinance shall include all appropriate information relating to the operation of the solid waste facility, including but not limited to:

1. A written discussion of any changes in operation and/or monitoring of the solid waste facility during the previous permit period;
2. A narrative summary of the monitoring data for the previous five years of operation;
3. A report covering the entire monitoring history of the solid waste facility, including a detailed outline of the solid waste facility's monitoring program, all monitoring results organized in a clear and concise table with an explanation of any missing or non-representative data, an analysis of any trends, any proposals for upgrading the monitoring program, and a discussion of monitoring results;
4. A detailed report on the operational history of the site, which shall include as a minimum: estimates of remaining permitted capacity and remaining site life, information on leachate generation rates and the management or fate of that leachate, discussion of equipment and personnel being used, discussion of operating problems encountered and how those problems have been or will be solved, efforts made to establish and maintain compliance with this Ordinance and permit conditions, and any plans for upgrading solid waste facility operations that may affect compliance with environmental laws and regulations;
5. A disclosure statement regarding criminal or civil violations, as described in subsection C.5 of this Section; and
6. The nature and source of the waste to be accepted, and the recycling and source reduction provisions to which that waste is subject.

**E. Public Notice Requirements.** Prior to submitting an application to the Board for an existing solid waste facility, a new solid waste facility, an expansion of an existing solid waste facility, a variance for a solid waste facility, a closing plan, a permit renewal, or a permit transfer the Applicant shall provide for public notification as follows:

1. Publish the public notice once in a major newspaper circulated in the Town of Jay. The notice must appear in the newspaper during the week the application is filed with the Board.
2. Send a copy of the public notice to the owners of property abutting the land on which the project is located. Abutters' names and addresses can be obtained from town tax maps. Notice shall be sent to all abutters by certified mail so that the abutters receive notice during the week the application is filed with the Board.

**F. Variances.** Any owner or operator may seek a variance to the provisions governing the establishment, expansion, alteration, operation or closing of the solid waste facilities subject to this Chapter by using the procedures described below. It is the responsibility of the Applicant to demonstrate that its proposal will comply with the intent of this Ordinance.

**1. Variances Affecting Site Location, Solid Waste Facility Design and Construction.**

The Board has determined that the requirements of these rules affecting the site location criteria for new, expanded or re-permitted solid waste facilities are best able to ensure that a solid waste facility will not pollute any waters within the Town of Jay, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance. Whenever an owner or operator seeks to vary from the requirements of these rules relating to site location criteria, or solid waste

## CHAPTER 9

facility design and construction, the owner or operator must present clear and convincing evidence that the solid waste facility site's location, design or construction is distinctive in some way that allows for compliance with the intent of this Ordinance.

Applications or plans that vary from the requirements of this Ordinance shall identify the provisions from which literal compliance is sought, the proposed alternative, and such clear and convincing evidence as is necessary to demonstrate affirmatively that the intent of this Ordinance will be met. The Board shall consider the variance as part of its comprehensive review of a complete application.

### **2. Variances Affecting Contents of Permit Applications and Closure Plans.**

Specific requirements relating to the contents of a solid waste landfill closure plan and the application requirements of § 9-402 B.2. may be varied with the approval of the Board.

### **3. Variances Affecting Operation.**

Whenever an owner or operator seeks to vary any aspect of a solid waste facility's or an activity's operation from the operating requirements of this Chapter, application may be made to the Board for a special condition to the permit to operate.

**a. Criteria.** The Board may grant a variance only when it finds that a solid waste facility will not contaminate any waters within the Town of Jay, contaminate the ambient air, constitute a hazard to health and welfare, or create a nuisance, and, specifically, that compliance with the intent of the operational rule is affirmatively demonstrated.

**b. Contents of Application.** Requests for a variance properly submitted to the Board, shall include, but not be limited to:

- i. Identification of the specific provisions of these rules from which variance is sought;
- ii. The alternative operational procedure proposed and the reasons why it meets the intent of the rule;
- iii. The reasons for which a variance is requested, including the environmental, economic and technological justifications; and
- iv. Any other relevant information the Board may request or the applicant may wish to provide.

**c. Term and Renewal of Conditions.** The term of a variance shall be concurrent with the term of the permit to operate, or for such lesser term as the Board may specify. A variance shall be renewed according to the procedure required for the renewal of a permit to operate, unless the Board, on a case-specific basis, shall specify another procedure.

### **4. Prohibitions.**

The Board shall not grant a variance for a new, expanded or re-permitted solid waste facility::

- a. When the proposed solid waste facility poses a threat to the quality of a significant sand and gravel aquifer which it does not overlie; or
  - b. When the proposed solid waste facility poses an threat to the quality of an underlying fractured bedrock aquifer as that term is defined in 38 M.R.S.A. Section 1310-N (2-A) (B).
- G. For purposes of this subsection, the provisions of ME Rules Chapter 401, Section 1.C.(2) , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

### **§9-404 CONDITIONS OF JAY SOLID WASTE FACILITY PERMIT**

The Board may impose any appropriate and reasonable conditions to insure compliance with this Chapter and Ordinance. However, every Jay Solid Waste Facility Permit shall be subject to the following standard conditions and the conditions of Chapter 3:

- A. Employees and authorized representatives of the Town of Jay shall be allowed access to the premises of the permit holder during normal business and operating times and at such other times as the Board deems necessary to perform such tests and inspections and examine all records relating to the solid waste facility.
- B. All applicable State and Federal laws relating in any way to solid waste shall be complied with.
- C. Approval to construct shall become invalid if construction is not commenced within 2 years after the granting of a permit. The applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the solid waste facility until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.
- D. The granting of a permit is dependent upon and limited to the reports, specifications, and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, reports, specifications, and supporting documents is subject to review and approval prior to implementation.
- E. The applicant shall secure and comply with all applicable federal, state, and local licenses permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- F. The applicant shall submit all reports and information requested by the Board demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins. During construction, the applicant shall meet the requirements of ME Rules Chapter 401, Section 3 and Section 5.M. ,

## CHAPTER 9

which are hereby adopted and incorporated herein by reference., as modified in this Ordinance, including § 9-303

G. Monitoring and reporting requirements contained in any Solid Waste Facility Permit issued by the Board shall be consistent with the requirements of this Chapter. In the event any monitoring or reporting requirements in Chapter 3 of this Ordinance are inconsistent with or less stringent than monitoring or reporting requirements in this Chapter of the Ordinance, the permit holder shall comply with the requirements of this Chapter of the Ordinance.

H. A permit holder is required to accept only solid waste which is subject to recycling and source reduction programs at least as effective as those imposed by State law.

I. No permit holder shall knowingly hire as an officer, director, supervisory or key employee, or knowingly allow to acquire an equity interest or debt liability interest, any person having been found guilty of a felony or to have committed any violation of environmental law or rules without first obtaining the approval of the Board.

J. Whenever any lot of land upon which an active, inactive or closed solid waste facility is located is transferred by deed, the following shall be expressly stated in the deed:

1. The type of solid waste facility located on the lot and the dates of its establishment and closure.

2. A description of the location and the composition, extent, and depth of the solid waste deposited.

If asbestos-containing waste or asbestos-contaminated waste has been disposed on a site, the location coordinates must be identified.

K. A copy of the permit must be included in all contract bid specifications for the solid waste facility.

L. The owner, operator and permit holder, whether the same person or different people, shall all be jointly and severally responsible for compliance with the Ordinance and the Permit.

*Twenty-Second, Sec. 38.*

### **§9-405 (Repealed)**

### **§9-406 LIABILITY INSURANCE**

A. All owners or operators, with the exception of municipally owned and operated solid waste facilities, shall submit with the application and annually thereafter proof of liability insurance for the solid waste facility for sudden and accidental occurrences. Coverage shall be provided for bodily injury and property damage and must be provided during active life and closure of the solid waste facility. The level of coverage must be at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual

aggregate, unless, because of a greater risk, a higher minimum coverage is required by the Board for a particular solid waste facility.

B. All liability insurance coverage amounts must be exclusive of legal defense costs.

C. If liability insurance is not available, a \$2,000,000.00 letter of credit drawn on a reputable bank, the terms of which the Board must approve, may be used in lieu of liability insurance for sudden and accidental occurrences.

D. The owner or operator of a private, non-commercial, solid waste facility may use a financial test in lieu of liability insurance coverage under certain conditions. These conditions include:

1. That the owner or operator of the solid waste facility derives more than 50 percent of its income from activities not associated with the handling, transportation, or disposal of solid waste or hazardous waste; and

2. That the owner or operator must meet the financial test for liability coverage in 40 CFR 264.147(f).

E. The wording of liability insurance endorsements shall be subject to approval by the Board. Said endorsements shall contain conditions equal to the following:

1. The Insurer is liable for the payments of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer;

2. Whenever requested by the Board, the Insurer agrees to furnish a signed duplicate original of the policy and all endorsements;

3. Cancellation of this endorsement, whether by the Insurer or the insured, shall only be effective upon written notice and only after the expiration of sixty (60) days after a copy of the written notice is received by the Board; and

4. Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a written copy of the notice has been received by the Board.

F. Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

G. If a liability insurance policy is written as a "claims made" policy, an endorsement must provide for a discovery period of at least twelve (12) months beyond the date of expiration or cancellation of the policy. The endorsement must also provide that the underwriter will notify the public according to the requirements below:

1. At least sixty (60) days prior to the date upon which the policy will expire or be cancelled, give written notification to all owners of property abutting the solid waste facility and to the Jay Code Enforcement Officer that insurance for the solid waste facility will expire or be cancelled. The notification shall include the date of expiration or cancellation, the fact that claims against the insured must be filed within twelve (12) months from the date of expiration or cancellation, and shall specify where and how can be filed;

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2. During the first, third, sixth and ninth month subsequent to the date of expiration or cancellation, the underwriter shall place in each of the State of Maine's major newspapers (Portland Press Herald, Bangor Daily News, Lewiston Sun, Kennebec Journal, and Waterville Sentinel) and in all local newspapers published or widely distributed in the Town of Jay an advertisement designed to attract notice and containing the information specified in 1, above.

H. An owner or operator of a solid waste facility using a financial test for liability coverage in lieu of liability insurance shall provide the Board with a letter from the owner's or operator's chief financial officer that demonstrates the owner's or operator's financial responsibility for liability coverage, including the ability of the owner or operator to pay any judgment that may be entered against the owner or operator, and a copy of an independent certified public accountant's report based on an audit done by generally accepted auditing standards, including an examination of the owner's or operator's financial statements for the latest completed fiscal year, indicating that the owner or operator has sufficient liquid assets which are not otherwise encumbered to be able to pay a judgment to the level of coverage required for liability insurance, that is, \$1 million per occurrence of \$2 million annual aggregate.

### **§9-408 WOOD WASTE FACILITY CRITERIA**

1. The Board shall issue a permit for the location, establishment, construction, expansion or operation of a wood waste facility only if the Applicant demonstrates that the following criteria will be met:

a. The criteria set forth in ME Rules Chapter 401.7, are hereby adopted and incorporated herein by reference; provided, however, that ME Rules Chapter 401.7(C) shall not be incorporated herein and except as modified in this Chapter and Ordinance, including § 9-303.

2. For the purposes of this section, a permit is not required for the location, establishment, construction, expansion or operation of a wood waste facility if the wood waste is generated on-site by a manufacturing process and the wood waste that is generated on-site is used, recycled or reused on-site.

## **PART 5**

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### **STANDARDS**

#### Section

§9-501 Issuance of a Jay Solid Waste Facility Permit

§9-502 Denial of a Jay Solid Waste Facility Permit

§9-503 Permit Transfers and Violations

### **§9-501 ISSUANCE OF A JAY SOLID WASTE FACILITY PERMIT**

The Board shall issue a Jay Solid Waste Facility Permit in accordance with Chapter 3 when it determines that:

- A. The solid waste facility will not pollute any water, within the Town of Jay, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.
- B. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has the financial capacity and technical ability to meet the standards of this Chapter and ME Rules Chapter 400, Sections 4.B. and 4.C. as hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 .
- C. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has made adequate provision for traffic movement of all types into, out of and within the proposed solid waste facility. The Board shall consider traffic movement both onsite and offsite. In making its determination, the Board shall consider vehicular weight limits, road construction and maintenance standards, vehicle type, public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed solid waste facility, and other relevant factors. The Applicant shall use ME Rules Chapter 401, Section 4.C, as hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 , as a guide to develop a demonstration of adequate provisions for the Board.
- D. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has made adequate provision for fitting the proposed solid waste facility into the existing natural environment and the proposed solid waste facility will not adversely effect existing uses, scenic character, air quality, water quality or other natural resources in the Town of Jay. The Applicant shall use ME Rules Chapter 401, Section 4.D , as hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 , as a guide to develop a demonstration of adequate provisions for the Board
- E. The Applicant has made adequate provisions for the control of odors.
- F. The solid waste facility will be operated such that the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal as required by 38 M.R.S.A. 1310N(5) and ME Rules Chapter 400.6.
- G. The solid waste landfill meets the standards governing hydrogeological criteria for siting or designing a solid waste landfill or governing the engineering criteria related to waste handling and disposal areas of a solid waste landfill set forth in the ME Statutes, ME Rules, and the applicable provisions of this Ordinance. Existing solid waste facilities licensed by the Department or MBEP prior to May 24,1989, shall be considered as having met the siting and design requirements of this Chapter (e.g. those which do not pertain to the operation of the solid waste facility). Vertical expansions of an existing solid waste facilities licensed by the Department or MBEP prior to May 24,1989, shall be considered as having met the design requirements of this Chapter, provided the Applicant has demonstrated that the proposed expansion will not compromise the integrity of the existing solid waste facilities.
- H. The solid waste facility provides a substantial public benefit, subject to 38 M.R.S.A. § 1310-N (3-A), and 38 M.R.S.A. § 1310-AA .
- I. Where applicable, financial assurances for closure, post-closure monitoring and maintenance, and corrective action have been established.

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- J. In the case of a new solid waste facility or solid waste facility expansion, the proposed solid waste facility will be built on soil types that are suitable to the nature of the undertaking and will not cause erosion of soil or sediment.
- K. In the case of a new solid waste facility or solid waste facility expansion, the solid waste facility will not pose a risk that a discharge to a significant ground water aquifer will occur.
- L. In the case of a new solid waste facility or solid waste facility expansion, the activity will not cause or increase the flooding of the solid waste facility area or adjacent properties nor create a flood hazard to any structure.
- M. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has made provisions for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project, and the proposed solid waste facility will not have an adverse effect on the existing or proposed utilities and roadways in the Town of Jay.
- N. The solid waste facility satisfies all the applicable requirements of this Ordinance.
- O. The solid waste facility is not currently polluting any water within the Town of Jay and there is no contamination in the ground or surface water beyond the solid waste boundary.
- P. The solid waste facility or construction using beneficial use materials or products will not pose a risk to the quality of a classified body of surface water.
- Q. The construction using beneficial use materials or products will be built on soil types that are suitable to the nature of the undertaking and will not cause slope instability.
- R. If the Applicant has a criminal or civil record of environmental law violations, all reasonable efforts have been made to clean up or mitigate damage caused by the violations.

### **§9-502 DENIAL OF A JAY SOLID WASTE FACILITY PERMIT**

- A. Notwithstanding § 3-105 D of this Ordinance, the Board shall deny an application for a Jay Solid Waste Facility Permit or deny consent for a permit transfer if the Applicant refuses to comply with the informational requirements of § 9-403 B.7. of this Chapter, or if the information supplied is untrue or misleading as to the facts pertaining to an applicant's criminal or civil record.
- B. Notwithstanding § 9-501 of this Ordinance, the Board shall deny an application for a Jay Solid Waste Facility Permit if an existing solid waste facility has contaminated ground or surface water beyond the solid waste boundary. Such a solid waste facility can only continue to operate under the provisions of a schedule of compliance or a court order. Unless the schedule of compliance or court order contains provisions for closure of the solid waste facility, the Applicant is free to re-apply for a permit beyond the dates contained in the schedule of compliance or court order. If an existing solid waste facility is operating under the terms of a schedule of compliance or court order or is currently polluting waters within the Town of Jay, that solid waste facility must demonstrate successful corrective action before the Board can find that the solid waste facility will not continue to pollute and issue a permit. In addition, before issuing a permit, the Board must find that all criteria outlined in the court order or schedule of compliance and this Ordinance are met. Any schedule of compliance issued after June 17, 1996 shall state its duration, not to exceed five (5) years. Nothing

in this provision shall limit the authority of the Board to renew a schedule of compliance for an additional term or terms.

C. The Board may refuse to grant a permit for a solid waste facility, or to approve transfer of a solid waste facility permit, if it finds that the owner or operator or any person having a legal interest in the applicant or the facility has been convicted of any crime or adjudicated to have committed any civil violation of environmental laws administered by the MBEP or other laws of the State of Maine, other states, the United States, or another country.

The Board may deny or revoke a permit because of such convictions or adjudications based on its judgment of the offense in question and whether the person fails to demonstrate rehabilitation by clear and convincing evidence. In making this determination the Board may consider the nature and responsibilities of the position that the individual would hold, the nature and seriousness of the offense, the date and circumstances under which the offense occurred, the age of the individual when the offense was committed, whether the offense was an isolated or repeated incident, any evidence of rehabilitation, and any recommendation offered by the Attorney General of Maine to the MBEP.

In the case of any person found to have violated any federal or state environmental protection laws, rules or regulations, the Board will consider whether such person is rehabilitated based on whether he or she has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities that resulted in a guilty verdict or conviction, and/or has made restitution to injured parties.

D. Notwithstanding § 9-501 of this Ordinance, the Board shall deny an application for a new commercial solid waste landfill. Further, the Board shall only relicense or approve a transfer of an existing commercial solid waste landfill, or license expansions of commercial solid waste landfills, if the applicable provisions of 38 M.R.S.A. 1310-X have been satisfied.

### **§9-503 PERMIT TRANSFERS AND VIOLATIONS**

A. Violations of the conditions under which a permit is issued shall constitute a violation of that permit, against which enforcement action may be taken, including revocation, pursuant to Chapter 4B.

B. Notwithstanding § 3-112 H of this Ordinance, no person shall transfer ownership, in whole or in part, of a solid waste facility permit or schedule of compliance without first obtaining approval for the transfer of the solid waste facility permit or schedule of compliance from the Board. The Board, at its discretion, may require that the proposed new owner of the solid waste facility apply for a new permit or may approve the transfer of the existing permit upon a satisfactory showing that the new owner has the technical and financial capacity to abide by all the permit terms and conditions, and satisfy all applicable criteria of this Ordinance. Any applicant seeking approval to transfer a permit or schedule of compliance shall submit compliance record information as specified in § 9-403 C.5. , and shall comply with the public notice requirements of § 9-403 E.

C. The holder of a permit or schedule of compliance and proposed transferee or assignee shall be jointly and severally liable for failure to obtain approval for the solid waste facility transfer as required by this subsection. Until the transfer has been approved as required by this subsection the holder of a permit or schedule of compliance and proposed transferee or assignee shall be jointly and severally liable for continued compliance with this Chapter.

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*Twenty-Second, Sec. 39.*

### **PART 6**

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### **CONSTRUCTION AND OPERATIONS**

Section

§9-601 Construction Requirements

§9-602 Operating Requirements

#### **§9-601 CONSTRUCTION REQUIREMENTS**

Unless specified otherwise in a Jay Solid Waste Permit, all solid waste facilities are subject to the following construction requirements:

**A. Solid Waste Landfill Construction.** For purposes of this subsection, ME Rules Chapter 401, Section 3 , are hereby adopted and incorporated herein by references, as modified in this Ordinance, including § 9-303 .

#### **§9- 602 OPERATING REQUIREMENTS**

Unless specified otherwise in a Jay Solid Waste Facility Permit, all solid waste facilities are subject to the following operating requirements:

**A. Operating Requirements.** For purposes of this subsection the provisions of ME Rules Chapter 401, Section 4.C. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

**B. Operation Training and Certification Program.** For purposes of this subsection the provisions of ME Rules Chapter 401, Section 4.B. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

**C. Annual Report.** For purposes of this subsection the provision of ME Rules Chapter 401, Section 4.D. are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

**D. First Aid.** The permit holder shall have and maintain adequate first-aid supplies at the solid waste landfill during operating hours and at all times when solid waste landfill personnel are present.

**E. Hazardous and Special Waste Exclusion Plan.** Only wastes permitted by the Board shall be accepted at a solid waste landfill. The operator shall develop and implement a plan for the detection, identification, handling, transportation, and disposal of any and all materials not permitted by the Board which may be delivered to the solid waste facility. For the purposes of

this subsection, the provisions of ME Rules Chapter 400, Section 9 and Appendix B. , are hereby adopted and incorporated herein by reference, as modified in this Chapter and Ordinance.

**F. Drainage of Surface Water.** The permit holder shall insure that the solid waste facility is graded and provided with a drainage system to minimize surface water run-on/run-off to reduce the amount of leachate generated and the potential for erosion. All structures shall be constructed as required in accordance with the applicable run-on/run-off control system provisions of § 9-403C.1. of this Chapter.

**G. Dust Control.** The operator shall use suitable measures to control dust on the site, the access road, any other areas related to the general solid waste landfill operations. The excessive use of water which would produce a leachate, or the use of waste oil or leachate is prohibited. Solid waste facility that accept wastes such as ash, asbestos, or sludge shall provide and utilize tire washing facilities, or an effective approved alternative, to prevent the accumulation of dust, mud, or waste materials on access, private or public roads.

**H. Equipment.**

1. Equipment in use at the solid waste landfill shall be sufficient to meet the operating requirements of this Chapter and as approved by the Board.

2. The operator shall maintain equipment to assure satisfactory performance capability for the various operations necessary for excavation, compaction, transportation, covering and other aspects of a solid waste landfill operation and provide for the prompt repair and replacement of such equipment.

3. The operator shall have a contingency plan for obtaining back-up equipment, to be used when back-up equipment is needed. Breakdown of solid waste landfill equipment affects the proper maintenance of the solid waste landfill. The interruption of proper operational procedures may result in enforcement action by the Board, if such a breakdown is not corrected in a timely manner. To alert the Board of operational difficulties, operators shall submit a written notice to the Code Enforcement Officer within 48 hours after any equipment failure, explaining briefly the problem and the corrective measures being taken.

**I. Erosion Prevention.**

1. The operator shall take whatever measures are necessary to minimize erosion during operation and after final cover has been placed and shall plant suitable vegetation over the area as soon as is practicable. Erosion control should be compatible with the Soil Conservation Service recommended practices or other appropriate standards as approved by the Board.

2. Other areas at the solid waste facility that present a high potential for erosion or that will be inactive for 6 months or more shall be planted with suitable vegetation.

**J. Leachate Management.** The operator shall manage leachate in accordance with the standards in § 9-403C.1.F.(5). of this Chapter and shall make every possible effort to minimize leachate production through such methods as control of stormwater infiltration and inflow, minimizing the

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active area of the solid waste landfill, and applying intermediate or final cover as soon as possible after landfilling ceases in an area.

### 1. Leachate, Leachate Collection, Leachate Detection System and Leachate Treatment Residue (LDS) Monitoring.

A plan for monthly monitoring of the leak detection system(s) (LDS) and quarterly leachate water quality shall be submitted to the Board for review and approval with each completed application for a facility.

A program of periodic monitoring of leachate quality and volume, leak detection system (LDS) fluid quality, volume and flow rate, and leachate treatment residue composition and generation rate must be conducted at all solid waste facilities which have a leachate collection and/or detection system. A sampling and analytical work plan must be submitted for Board review and approval. The sampling and analytical work plan for leachate treatment and residue characterization must meet the requirements of § 9-403C.2. The Board approved sampling and analytical work plan must be part of the Environmental Monitoring Program manual for the solid waste facility, and must include all proposed monitoring points. Sampling schedule, methods of sample collection and preservation, analyses to be performed, quality assurance/quality control, analytical and statistical methods and reporting format must be specified. At a minimum, the following must be incorporated into the monitoring plan:

- a. Sampling points should be located as close as possible to the generation point.
- b. Sampling points in primary and secondary leachate collection systems and LDSs should be adequate to sample liquids beneath each leachate collection area, solid waste landfill cell, and the leachate holding solid waste facility.
- c. Leachate and LDS fluid generation rates must be reported in gallons per acre per day, using total daily flow recording.
- d. Leachate and LDS fluid must initially be characterized through the sampling and analysis of four or more independent samples of the leachate and LDS fluid. Operators of existing solid waste landfills with a leachate monitoring plan approved by the Board and consistent with the requirements of the Ordinance are not required to perform an initial characterization of leachate and LDS fluid provided the wastes currently accepted are chemically consistent with wastes previously accepted.
- e. Detection monitoring for leachate must be for the same parameters and at the same frequency as approved for the ground water detection monitoring program, except as may be allowed by the Board and the results reported in the solid waste facility's Environmental Monitoring Program quarterly and annual reports.
- f. Parameters consistently undetected in a solid waste facility's leachate, or in results from its ground water monitoring network, may be deleted from the leachate monitoring program upon approval by the Board.
- g. Unless otherwise approved by the Board based on site-specific characteristics, or required by the solid waste facility's Response Action Plan, sampling, analysis, and reporting requirements for LDS fluid must be as follows:

- (1) Sampling and reporting of the field parameters of flow, pH, temperature, specific conductance, turbidity, DO and field observations must be conducted monthly, and reported with leachate and water quality information.
  - (2) Monitoring for other than field parameters must be for the same parameters and at the same frequency as approved for the ground water and/or corrective action monitoring programs and the results reported in the solid waste facility's Environmental Monitoring Program Quarterly and Annual reports.
- h. Leachate residues generated by on-site treatment or settlement must be analyzed prior to disposal.

This plan shall be implemented at the start of solid waste facility operations and shall continue through the post-closure period until the Board approves its discontinuance.

All leachate quality, leak detection system, and leachate treatment residue monitoring results shall be submitted in the Environmental Monitoring Program Quarterly and Annual Reports.

**K. Leachate Collection and Leak Detection Inspection and Cleaning.** Regularly schedule inspection and cleaning of the collection and detection systems shall be performed.

**L. Operations Manual.** The operator shall prepare and maintain an operations manual of current policies and procedures for the solid waste landfill, beneficial use construction activities and all corrective actions.

1. **Revise Operations Manual.** Prior to commencement of operations of a new or expanded solid waste facility, the operations manual provided with the application must be revised to reflect any changes which occur during the solid waste facility licensing and construction processes.
2. **Certified Copies.** The operator shall issue certified copies of the operations manual being used for the solid waste landfill, beneficial use construction activities and corrective actions to the Board and to key operating and management personnel of the solid waste facility. In addition, a certified copy must be available for use at the solid waste facility at all times. The operator is responsible for providing timely updates to all certified copies, distributing certified copies to individuals whose job assignments require them, and making and distributing changes to policies and procedures to the certified copies as they are implemented.
3. **Contents.** The operations manual must include the information necessary to enable supervisory and operating personnel, and persons evaluating the operation of the solid waste landfill, beneficial use construction activities and all corrective actions, to determine the sequence of operation, policies and procedures, and monitoring, maintenance, inspection, and legal requirements that must be followed for safe, orderly and environmentally sound operation on a daily, monthly, quarterly, yearly, and life cycle basis. The operations manual must address each of the areas identified in § 9-602.A. and Board approved beneficial use construction activities. Legible copies of the record drawings must be included in the operations manual or must be readily accessible to operating personnel.

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4. Annual Review. The operations manual must be reviewed annually by the operator and updated as necessary.
5. Training. The operator shall familiarize operating personnel with relevant sections of the operations manual. For new solid waste facilities or expansions of existing solid waste facilities, the owner or operator must demonstrate compliance with the training requirements in § 9-602B prior to commencing solid waste landfill operations. For existing solid waste facilities, the owner or operator must demonstrate compliance with the training provisions for key personnel by November 2, 2001.

**M. Operational Records.** The operator shall maintain, for the active life of the solid waste facility, a record of operational information, which shall include the type and quantity and origin of waste received, the equipment, personnel and cover used, the portion of the solid waste landfill used, any deviations made from the approved plans and specifications, data from the monitoring program, fiscal information, accident reports, equipment breakdowns, inspection records in accordance with § 9-602.A, and fires.

**N. Fire Protection.** The operator shall take suitable measures for the prevention and control of fires at the solid waste facility and comply with at least the following:

1. Arrange for the Jay Fire Department to provide emergency service whenever called;
2. Provide sufficient on-site equipment such as detachable fire extinguishers, maintained in working order, for minor fires;
3. Comply with the following rules of the State of Maine Bureau of Forestry; and,
  - (a.) A strip of 10 feet wide cleared to a mineral soil shall be constructed on all sides of the solid waste boundary. All grass, weeds, slash, brush and debris, and other inflammable material shall be removed for a distance of 100 feet in all directions outside the cleared mineral strip.
  - (b.) Trees need not be removed except that green branches of conifers and dead branches of all trees shall be pruned to a height of 10 feet above the ground. Dead snags from all trees shall be removed.
  - (c.) During periods of high forest fire hazard, when any demolition debris is burning, a watchman must be onsite.
4. Maintain a soil stockpile sufficient to cover hot loads.

**O. Communication.** A means of communication with the Jay Fire Department, Jay Police Department, or operator's office shall be provided at the solid waste facility.

**P. Supervision of Operation.** The operation of the solid waste facility and beneficial use construction activities shall be under the overall supervision and direction of a person qualified and

experienced in matters of solid waste disposal and beneficial use construction activities. An attendant shall be on duty at the solid waste facility site during all operating hours at a solid waste facility receiving solid waste. Scavenging through waste shall be prohibited.

**Q. Vector Control.**

1. The on-site population of disease vectors shall be minimized through the periodic application of cover material or other techniques as appropriate to protect public health and as approved by the Board.
2. A routine program for the control and elimination of insects and rodents at the solid waste landfill may be required by the Board. The operator shall implement, when necessary, supplemental vector control measures, including but not limited to the use of effective insecticides and rodenticides.

**R. Litter Control.**

1. The operator shall provide for routine maintenance and general cleanliness of the entire solid waste facility site.
2. The operator shall control wind-blown paper or other light materials by using suitable permanent or portable fencing, earthen banks, natural barriers or some other effective device.

**S. Environmental Monitoring Program.** An Environmental Monitoring Program shall be submitted to the Board for review and approval with each completed permit application for a new, altered or expanded solid waste facility and a new or renewed permit. This Environmental Monitoring Program shall be implemented prior to start of landfilling operations and shall continue through the post-closure period until the Board approves its discontinuance. The program may be amended upon written approval of the Board.

The Environmental Monitoring Program shall be designed to detect and monitor effects of the solid waste facility on the surrounding environment, including ground and surface water and air, and to mitigate any threats, or potential threats, to the public health and safety or to the environment that may result from solid waste landfill operations. Ground water, surface water and air quality monitoring programs are required for each solid waste facility. At a minimum, the monitoring program shall address each of the following areas in this subsection.

1. Ground Water Monitoring. For purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 2.A. , are hereby adopted and incorporated by reference, as modified by § 9-303, this Chapter and Ordinance, including the following:
  - a. Locations of suspected contamination will trigger Assessment Monitoring of all locations as outlined in § 9-902.S.3.
  - b. Upgradient and downgradient wells shall be screened in the same hydrogeologic unit, where practicable and applicable.
  - c. The placement and number of downgradient monitoring wells in locations of suspected contamination will be based on the extent of the plume downgradient of the solid waste

## CHAPTER 9

boundary, changes and attenuation of the plume with time and the distance to receptors. In some cases multiple wells will be required along a particular flow path to define and assess the threat posed by the suspected contamination.

- d. Accessibility by vehicle shall be provided to all monitoring well locations.
  - e. The maximum allowable drawdown during low flow sampling shall be six (6) inches with the pump intake set near the center of the screened interval. Wells that cannot meet allowable drawdown requirements need to be identified and an approach to meet the goals of low flow need to be submitted for the Board's review.
  - f. Check new wells and all modified wells for stratification and set pump intake at the highest specific conductance.
2. **Surface Water Monitoring.** For the purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 2.B., are hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303.
  3. **Water Quality Monitoring Program.** For the purposes of this subsection the provisions of Me Rules Chapter 405, Subsection 2.C., are hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303, along with the following:
    - a. All solid waste facilities shall demonstrate that the Water Quality Monitoring Program is consistent with the site's hydrogeology, ground water flow path, and directions, surface water drainage pattern and operations. This demonstration should be part of the solid waste facilities annual evaluation of the Water Quality Monitoring Program.
    - b. Detection monitoring requirements apply to new or existing solid waste facilities that have no detections or contaminants in ground water and/or surface water, or exhibit a deterioration of water quality of water quality has "returned" to background levels through corrective action or natural attenuation.
    - c. Assessment monitoring requirements apply to existing or expanded solid waste facilities that have detections of contaminants in ground water or surface water or have exhibited a statistical significant change in the water quality or a long term or short term water quality deterioration. Facilities will be in assessment monitoring until the solid waste facility has developed a Correction Action Plan and implemented a Correction Action Monitoring Program.
    - d. Sampling frequency will be quarterly unless otherwise approved by the Board.
    - e. If the results of detection monitoring indicate a possible deterioration in water quality at one or more ground water monitoring wells or surface water monitoring points, the owner/operator shall initiate an evaluation of the causes of the deterioration in water quality within 5 working days of its receipt of the laboratory results. A report of the evaluation, prepared and sealed by a qualified professional, must be submitted to the Board for review and approval within 45 days of the date the evaluation is initiated. The report may be a part of the regular monitoring report or a separate document. The evaluation must include the following:

- 1) An evaluation of possible errors, such as errors in sampling, analysis, or mathematical problems with the monitoring data. If it is determined that the problem lies with the lab, field sampling and/or record keeping then all affected water quality samples shall be retested.
- 2) A statistical analysis of the data from the monitoring program shall be performed in accordance with § 9-602.S.8. using a lower confidence level of 90%. Review change for consistency, persistency and repeatability.
- 3) A finding that a review of the solid waste facilities operation and practices was made and an evaluation of sources other than the solid waste facility which may have caused or contributed to the possible deterioration in water quality.
- 4) Resampling of affected location(s) should be completed within the same season as the initial sampling but not more than 4 weeks after the initial sample was taken.
- 5) If resampling confirms the initial results, the owner/operator will notify the Board that contamination has been detected. The next scheduled sampling event will be the first sampling for the assessment monitoring program.
- 6) Two weeks before the next regularly scheduled sampling event the owner/operator will submit a plan to the Board for the assessment monitoring program. If the assessment monitoring program requires additional sampling locations, a plan for the hydrogeologic assessment to be done in selecting additional locations must be provided. This plan will be the work schedule for installing the necessary wells and piezometers and provide the schedule to insure that the new location will be available for the second sampling event after the initial detection of contamination.
- 7) The detection of contamination or a specific type of contamination may require additional site characterization. If the contamination is one not previously detected or not reported as part of the waste characterization, additional waste characterization may be necessary. If the contamination detected is in wells or at depths not previously predicted from the site conceptual model and/or computer model done as part of the site characterization or assessment for the detection monitoring program, a site characterization plan shall be submitted to the Board with the assessment monitoring program.

4. Corrective Action Plan. For the purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 2.D., and ME Rules Chapter 400, Subsection 11.B., are hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 , along with the following:

- a. Background or baseline water quality is the standard by which compliance is achieved.
- b. Corrective Action Monitoring Program

- 1) All corrective action water quality locations shall be sampled and the results shall be evaluated quarterly for: changes; detection of a test parameter not previously detected at a specific sample location; and a detection of VOC's, SVOC's or metals. A trend analysis shall be conducted to determine if there has been a significant increase or decrease in contamination and the results reported as part of the annual report due each

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year. The Mann-Kendall Test for trend will be used to determine if there has been a significant change in the data for each parameter. Discrete changes shall be evaluated in water quality to determine the significance of each change. Such analysis shall include as applicable, the use of statistical control charts with baseline values developed from historic data. The Board may establish site-specific baseline values and action levels through further actions.

a) Site Specific Water Quality Baseline Values and Action Levels. A corrective action water quality location whose results exceed the action levels established by the Board will be resampled immediately upon discovery of the exceedence. If the sample confirms the action level exceedence, a corrective action plan will be submitted to prevent further contamination and as appropriate restore conditions and capture the plume migration at that location. If resampling does not confirm the detected action level exceedence, the location(s) will be resampled at the next quarterly sampling event as a continuation of the confirmation process. If the next quarterly sampling confirms the initial action level exceedence, then a corrective action plan will be submitted to prevent further contamination and as appropriate to restore the water quality and prevent contaminated ground water from passing the location. If the next quarterly sampling does not confirm the initial action level exceedence, then the initial action level exceedence will be considered an anomaly. However, should the action level exceedence occur in the following year, the resampling will be done as stated above.

b) Detection of a VOC, SVOC, Metals, Toxics or other Test Parameter Not Previously Detected. For all surface water and ground water monitoring well corrective action water quality sampling locations where there is a detection of a VOC or SVOC not previously detected, the Board or its representative will be notified immediately and the sampling location will be resampled within two weeks of discovery of the parameter. For all surface water and ground water monitoring well corrective action water quality sampling locations where there is a detection of a metal that has not been previously detected, the Board or its representative will be notified immediately. The Board or its representative shall determine whether or not to resample a sampling location when there is a detection of a metal that has not been previously detected. If resampling confirms the detection, a corrective action plan will be submitted to prevent further contamination and as appropriate to restore conditions and capture the plume migration at that location. If resampling does not confirm the detection, the location(s) will be sampled at the next quarterly sampling event as a continuation of the confirmation process. If the next quarterly sampling confirms the initial detection, then a corrective action plan will be submitted for restoring the water quality and preventing contaminated ground water from passing the location. If the next quarterly sampling does not confirm the initial detection, then the initial detection will be considered an anomaly. However, should the detection occur in the following year, resampling will be done as stated above.

c) Mann-Kendall Test. A trend analysis shall be completed of water quality for each corrective action sampling location on an annual basis using the Mann-Kendall test. Any corrective action water quality sampling location where a 95% probability trend has been identified will be evaluated and appropriate remedial action proposed.

2) Water Quality Reporting. See § 9-602.S.9.

c. The Corrective Action Monitoring Program will continue until the corrective action has successfully demonstrated through water quality data that the corrective action has mitigated the contamination, which triggered the corrective action monitoring.

d. Corrective Action Monitoring will revert to detection monitoring only when it can be demonstrated that the water quality has returned to background or baseline water quality and until the Board concurs that successful corrective action has been demonstrated.

5. Well and Piezometer Installation, Construction and Maintenance. For the purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 5, are hereby adopted and incorporated by reference as modified in this Chapter and Ordinance, including the following:

a. All monitoring wells shall be installed under the direction of a Maine Certified Geologist, or a geologist meeting the requirements of 32 MRSA § 4901 et. Seq.

b. A map or plans showing monitoring well locations and location of a benchmark to be used in determining well elevations shall be furnished.

c. The type and size of the well casing and screen shall be furnished.

d. The geologist description should include a estimate of the sediments plasticity and the results of the tests ran in the field to obtain the estimate (thread test, molding, slake test, etc.), an estimate of the sediments gradation to include an estimate of the percent fines (percent passing the #200 sieve) and the percent of 1/4 inch or larger material. If there are changes in the core from top to bottom, these changes should be noted and a description provided of each section of the core.

e. Engineering soil descriptions such as the Unified Soil Classification System are useful additions to the geologist's geological logging description and should be used whenever the geologist is qualified to make such descriptions

6. Leachate Management. For the purposes of this subsection the provisions of § 9-602.J and § 9-602.K are incorporated in the Environmental Monitoring Program.

7. Solid Waste Landfill Gas Monitoring Program. For purposes of this subsection the provisions of § 9-602.A, Subsection (11) are incorporated into the Environmental Monitoring Program along with the following:

a. Perform an assessment of the air quality within and around the solid waste facility. This program includes as a minimum a qualitative and semi-qualitative sampling/screening of: background air; air around the solid waste landfill; air in leachate collective systems; air in any adjacent buildings; gas in solid waste landfill gas vents; and gas in any corrective actions.

1) Air Quality Sampling/Screening. Air quality sampling/screening will be taken at a period agreed upon by the Board.

Qualitative air quality sampling/screening measurements will be made using Photo Ionization Detector (PID), multi-gas meters (LEL and H2S monitor), explosimeter, OVA

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Flame Ionization Detector (FID) with a charcoal pre-filter. Semi-qualitative sampling/screening measurements will be made using a field Gas Chronograph (GC).

Field instruments will be calibrated in accordance with manufacturer's specifications each day, and a record of the calibration submitted with the Solid Waste Landfill Gas Monitoring report.

Qualitative and semi-qualitative sampling/screening will be obtained using the following procedure:

- a) Measurements from leachate collection system, solid waste landfill gas vents, and corrective actions will be obtained by inserting the instrument probe, probe sample tube extension, or sample pump suction line into the sample location to a point where confined space entry point is broken. Leave in head space for 15-20 seconds and record the highest reading.
  - b) Measurements for buildings and background will be obtained by measuring the ambient air within specified buildings or at specified areas of the solid waste landfill. Read ambient air concentrations for 15-20 seconds and record the highest reading.
  - c) Measure air temperature, barometric data, and wind speed at the beginning, mid point, and end of each sampling day.
  - d) Air samples will be analyzed/screened for percent Lower Explosive Limit (LEL) and calibrated for methane, hydrogen sulfide, percent oxygen, and the following non-methane volatile organic compounds:
    - Acetone;
    - Benzene;
    - Chlorobenzene;
    - Vinyl Chloride;
    - Ethyl Benzene;
    - Methyl Isobutyl Ketone;
    - Methyl Ethyl Ketone;
    - 1,2 Dichloroethene;
    - 1,2 Dichloropropene;
    - Methylene Chloride;
    - Tetrachloroethane;
    - Tetrachloroethene;
    - Tetrahydrofuran;
    - 1,1,1 Trichloroethane;
    - 1,2,2 Trifloroethane;
    - Trichloroethene;
    - Toluene; and
    - Total Xylene
- 2) Reporting. A separate Solid Waste Landfill Gas Monitoring Report will be submitted annually to the Board as an attachment to the solid waste landfill annual report. Each air quality report will include:

- a) Table of Contents;
- b) Introduction;
- c) Sample locations including a site location map and a discussion on sampling locations (background, solid waste landfill, leachate collection system, corrective actions, and buildings);
- d) Sampling collecting protocols, including a discussion of any sampling deficiencies or problems specific to the sampling results;
- e) Quality Assurance/Quality Control (QA/QC) includes: field QA/QC and equipment calibration data and a statement saying whether the QA/QC objectives were met;
- f) Analytical results including a discussion of the analytical results for each location and a tabulation of all results by location; and
- g) Concluding remarks including a comparison of past and current results by sample/screening and location and type and a recommendation for future sampling rounds.

8. Sampling and Analytical Plan. Develop a Sampling and Analytical Plan for the chemical and physical characterization of wastes, groundwater, surface water and leachate. For the purpose of this subsection provisions of ME Rules Chapter 405, Section 3.A. and Section 3.B., are hereby adopted and incorporated herein by reference, – as modified in this Ordinance, including § 9-303 , along with the sampling, handling and analysis of groundwater requirements of § 9-602.S.1. and the sampling, handling and analysis of surface water requirements in § 9-602.S.2. The Plan shall be submitted to the Board for review and approval prior to commencing with any environmental monitoring program.

- a. The Sampling and Analytical Plan shall include, at a minimum, a detailed description of the following:
  - 1) Identification of parameters to be analyzed;
  - 2) Sample collection methods;
  - 3) Sampling frequency;
  - 4) Procedures for decontamination of sampling equipment prior to sampling and between the collection of successive samples;
  - 5) Sample storage and preservation procedures;
  - 6) Sample holding times;
  - 7) Sample handling (chain-of-custody) protocols;
  - 8) Analytical methods;

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- 9) Estimated practical quantification limits for each parameter to be quantified;
  - 10) Sampling and analysis quality assurance/quality control procedures;
  - 11) Data reduction, validation and reporting methods including methods of statistical interpretation of analytical results; and
  - 12) A site map clearly depicting the location of all sampling points.
- b. The Sampling and Analytical Plan shall be developed in accordance with approved State or Federal guidance documents in order to assure adequate waste characterization. The applicable guidance documents shall include:
- 1) Test Methods for Evaluating Solid Wastes, USEPA, SW-846, 3rd Edition;
  - 2) Waste Analysis Plans, A Guidance Document, USEPA, EPA/530-SW-84-012, October 1984;
  - 3) Procedures for Handling and Chemical Analysis of Sediment and Water Samples, USEPA/Corps of Engineers, May 1981;
  - 4) Standard Methods for the Examination of Water and Wastewater, APHA/AWNA/WPCF, 16th Edition;
  - 5) Annual Book of ASTM Standards, Sections 5 and 11, ASTM, 1988;
  - 6) Methods for Chemical Analysis of Water and Wastes, USEPA, EPA600/4-79-020, March 1983; or
  - 7) An equivalent State or Federal guidance document as approved by the Board or Department.
- c. An independent, qualified laboratory shall perform all laboratory analyses.
- d. Resample locations that fall outside of the TDS/SpC ratio or duplicate sample locations that exceed the 10% differential. The resampling must occur within the same sampling season as the original sample.
9. Water Quality Monitoring Report. For purposes of this subsection, ME Rules Chapter 405., Section 3.C.(1) through Section 3.C.(5), are hereby adopted and incorporated by reference, as modified in § 9-303, this Chapter and Ordinance, including the following:
- a. Quarterly Report. Water quality reports, with quarterly water quality results archived in a format approved by the Board or its representative will be submitted quarterly to the Board (7 weeks after the last water quality sample is taken or 9 weeks after the first water quality sample is taken for a given sampling round, which ever comes first). Each water quality report will include:
    - 1) Table of Contents;
    - 2) Introduction;

- 3) Sample collection locations including a solid waste landfill site map and a discussion on sampling type (ground water, surface water, leachate, and field quality assurance/quality control) and corrective action system.
  - 4) Sampling collection protocols, including a discussion of any sampling deficiencies or problems specific to the sampling round;
  - 5) Quality Assurance/Quality Control (QA/QC) including; field QA/QC (field blanks, trip blanks, laboratory method blanks, sample blinds, duplicates, and field equipment calibration) data/results; laboratory QA/QC (VOC/SVOC surrogate recoveries) data/results and evaluations. The report shall state any field or laboratory problems which impacted the sampling results; and whether the QA/QC objectives were met.
  - 6) Analytical results including: estimate of surface water flow; field parameter measurements; field observation reports, low flow/low impact evaluation data, water elevations prior to sampling; analytical laboratory reports for metals, major ion concentrations, indicator parameters, and volatile and semi-volatile organics; all resample results and discussions; quality control data validation summary; sample chain of custody; a presentation of the analytical results for each sampling and parameter type by corrective action type; and a tabulation of all results by corrective action type and parameter; and
  - 7) Each quarterly report will evaluate the results against any established site specific baseline values or action levels, report whether or not there has been any detection of a test parameter not previously detected, and report whether or not there has been any detection of VOC, SVOC, and/or metals at any location.
- b. Annual Report. An annual report will be developed and presented each year. This report will compare past and present results, and discuss the trending analysis done and compare results at each location to any water quality baseline values and action levels and make recommendations for future sampling events.
- 1) The report will provide a description of the preceding year's data and its relationship to the historical data set.
  - 2) This Report shall trend and analyze the data at sample locations. Those sample locations with significant trends will be correlated with activities that have occurred at the solid waste facility over the preceding year. Water quality sampling locations that historically have had significant trends and did not have a significant trend during the preceding year will be correlated with changes that have occurred at the solid waste landfill. The data shall be evaluated to determine data impact on the historical trend and analyze the water quality data to determine if there is a relationship between the solid waste landfill location and the water levels; flow data from the leachate collection system; flow data from the corrective actions; and precipitation.
  - 3) The corrective action location(s) water quality data, if applicable, will be analyzed in conjunction with the hydraulic monitoring data to determine if water quality changes are due to a decrease in the quantity, duration, and peak flow of the leachate, and/or a lowering of the water levels within the waste pile or the systems themselves.

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4) Based on the analyses above, appropriate recommendations shall be made to change to the water quality monitoring program, hydraulic monitoring program, and corrective actions. These recommendations shall allow the water quality standards to be met and to better achieve reductions in the contaminated ground and surface water.

**T. Recycling and Source Reduction.** The operator shall make provisions for recycling and source reduction consistent with the most recent State recycling plan. A detailed recycling plan must be implemented and followed by the operator to ensure that the recycling operations are carried out in an organized, sanitary, and dependable manner.

**U. Non-Recoverable Oily Waste.** The disposal of non-recoverable oily waste shall be in accordance with the applicable requirements, governing disposal in solid waste landfills in ME Rules Chapter 405, Section 6.C.(3), which are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303.

**V. Ash Disposal.** The disposal of oil, coal, wood, multifuel boiler and incinerator ash shall be in accordance with the applicable requirements governing disposal in solid waste landfills in ME Rules Chapter 405, Section 6.C.(4), and ME Rules of Chapter 405.5 which are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303.

## **PART 7**

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### **CLOSURE**

Section

§9-701 Closure

#### **§9-701 CLOSURE**

**A. Standard.** In general, closure shall be accomplished in a manner which minimizes both the need for further maintenance and the post-closure formation and release of contaminants to the environment to the extent necessary to protect human health and the environment.

**1. Solid Waste Landfill Closure Requirements.** For the purposes of this subsection, the provisions of ME Rules Chapter 401, Section 5 and ME Rules Chapter 400, Section 11.A., are hereby adopted and incorporated herein by reference as modified in this Ordinance, including § 9-303, along with the following:

- a. The Closure Plan shall include, but not be limited to, information regarding the cover source operation which includes, but is not limited to, the following:
  - 1). A mining and reclamation plan, with appropriate timetables;
  - 2). A copy of the written notice to abutting property owners informing them of the intention to mine the cover material;

- 3). A letter of authorization from the property owner, if other than the Town of Jay;
- 4). Proposed measures to prevent soil erosion and to protect ground and surface water;
- 5). The location of any on-site or nearby roads, rivers, streams, brooks, great ponds or freshwater wetlands;
- 6). The exact location and limits of the mining activity, as indicated on a copy of a United States Geological Survey Map; and
- 7). A plan for the establishment and maintenance of buffer strips. The Board shall consider all relevant evidence concerning water bodies within or adjacent to the solid waste facility in determining whether they will be adequately protected from sedimentation and surface runoff by buffer strips.

**PART 8**  
**POST CLOSURE MONITORING AND MAINTENANCE**

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Section

§9-801 Post Closure Monitoring and Maintenance

**§9-801 POST CLOSURE MONITORING AND MAINTENANCE**

**A. General Post Closure Monitoring and Maintenance Plan**

**1. Inspections.** The solid waste landfill and beneficial use construction activities shall continue to be inspected in accordance with the approved Solid Waste Facility Operations Manual after closure until the Board approves a decrease in frequency or cessation of inspections. Deficiencies noted during inspections must be summarized along with corrective measures taken and be corrected as soon as weather conditions allow.

**2. Cover Maintenance.** The final cover for the solid waste landfill and beneficial use construction activities shall be maintained to prevent ponding of water, erosion of cover materials or otherwise to maintain integrity. Vegetative cover shall be mowed annually to prevent the growth of deep rooted, woody plant species. Animal burrows into the cover must be eliminated and shall be repaired as needed.

**3. Drainage.** Site work shall be performed as necessary to ensure that the closed handling site and wastewater lagoon site is kept well drained.

**4. Restricted Access.** The solid waste facility and beneficial use construction activity area shall be policed or other methods shall be provided to prevent the dumping of solid waste on the solid waste landfill and beneficial use construction activity area after closing.

**B. Solid Waste Facility Post Closure Monitoring and Maintenance Plan.** A post-closure monitoring and maintenance plan shall be submitted to the Board, as part of the the solid waste landfill closure plan required in § 9-701 of this Chapter, for review and approval at least 1 year

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before the start of any closing operations. For purposes of this subsection, the provisions of ME Rules Chapter 401, Section 6 and ME Rules Chapter 400., Section 11.A. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-301, , along with the following:

- 1. Ground Water Monitoring.** Ground water shall continue to be monitored quarterly in accordance with § 9-602.S. after closure until the Board approves a decrease in monitoring frequency or parameters or both, or its discontinuance. Monitoring results shall be included in the post-closure inspection reports.
- 2. Surface Water Monitoring.** Surface waters shall continue to be monitored quarterly in accordance with § 9-602.S. after closure until the Board approves a decrease in monitoring frequency or parameters or both, or its discontinuance. Monitoring results shall be included in the post-closure inspection reports.
- 3. Gas Monitoring.** Gas monitoring must be conducted in accordance with the Gas Management Plan approved for the closure and post closure period under the requirement of § 9-701 and § 9-602.S. Gas vents, and other designed monitoring points, shall be monitored on a quarterly basis for the duration of post-closure care, unless directed otherwise by the Board. Monitoring results shall be included in the post-closure inspection reports.
- 4. Leachate Monitoring and Maintenance.** Leachate and the leachate management system must be monitored in accordance with the Leachate Management Plan for the closure and post-closure period approved under the requirements of § 9-701, § 602.J. and § 9-602.K. Leachate collection and treatment systems shall be regularly monitored and maintained after closure, as determined by the Board. Leachate quality and leak detection system monitoring shall continue to be monitored quarterly after closure until the Board approves a decrease in monitoring frequency or parameters or both, or its discontinuance. Monitoring results shall be included in the post-closure inspection reports. Provisions must be made for continued leachate removal and treatment until the Board approves a cessation in removal and treatment.

### C. Post Closure Administration and Costs.

#### 1. Administrative Requirements.

**a. Post Closure Monitoring Inspection and Maintenance Report.** The results of ground water and surface water quality, gas, slope stability, leachate, water quality, settlement and beneficial use construction activity monitoring along with solid waste landfill, drainage and beneficial use construction activities inspections and all drainage, leachate and cover maintenance shall be submitted to the Board quarterly or as determined by the Board based on the inspection and monitoring results. A monitoring and inspection report shall be submitted to the Board within 30 days after the end of each quarter and shall include all monitoring and inspection results and all maintenance activities specified in this Section.

**2. Estimated Costs.** A detailed estimate of the post-closure monitoring and maintenance costs shall be submitted to the Board with the post-closure monitoring and maintenance plan.

**3. Long-Term Monitoring and Maintenance.** Post-closure monitoring and maintenance shall be carried out for a minimum of 30 years or longer if required by the Board. Where

applicable, an escrow closure amount approved by MBEP or the Department shall be maintained to pay for the cost of post-closure monitoring and maintenance.

*Fifth, Sec. 25. Sixth, Sec. 53. Twentieth, Sec. 11.*



# CHAPTER 12

## WATER

### Part

1. Short Title & Definitions
2. Prohibitions and Operations
3. Jay Water Permit
4. Water Quality Classification
5. WET Testing and Chemical - Specific Testing for Toxic Pollutants

*Seventeenth, Sec. 71.*

### **PART 1**

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#### **SHORT TITLE AND DEFINITIONS**

##### Section

§12-101 Short Title

§12-102 Definitions

#### **§12-101 SHORT TITLE**

This Chapter shall be known and may be cited as “**Jay Environmental Control and Improvement Ordinance-Water**”.

#### **§12-102 DEFINITIONS**

A. In addition to the terms defined in Chapter 1, in this Chapter, unless the context otherwise requires, the following words and phrases shall have the following meanings:

1. **Town:** “Town” means the Town of Jay, Franklin County, Maine.
2. **Discharge:** “Discharge” or “Discharge of a pollutant” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other addition of any pollutant to waters of the State located within the Town.
3. **Indirect Discharge:** “Indirect Discharge” means a Non-Domestic discharge of a pollutant to a publicly owned treatment works.

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**4. Waters of the State:** “Waters of the State” means any and all surface and subsurface waters which are contained within, flow through, or border upon the State of Maine or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

**5. Pollutant:** “Pollutant” means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial, or agricultural wastes of any kind.

**6. Point Source:** “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture, agricultural storm water discharges, erosion related to agricultural activities, snow dump runoff, or runoff from road salt or road salt storage piles.

**7. Federal Water Pollution Control Act:** “Federal Water Pollution Control Act” means the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended.

**8. New Source:** “New source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after enactment of this Ordinance.

**9. Existing in-stream water uses.** “Existing in-stream water uses” are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard of classification of the particular water body.

**10. Color Pollution Unit.** “Color Pollution Unit” means that measure of water color derived from comparison with a standard measure prepared according to the specifications of the current edition of “Standard Methods for Examination of Water and Wastewater,” adopted by the United States Environmental Protection Agency or an equivalent measure.

**11. Pounds Per Ton.** “Pounds per Ton” means the unit for measurement of color in the discharge from the production of wood pulp. The numerator of this unit is the product of the number of color pollution units multiplied by 8.34 multiplied by the volume of effluent discharged measured in millions of gallons. The denominator of this unit is measure in tons of actual production of unbleached wood pulp as measure on an air dried basis.

**12. Toxic Pollutant:** Toxic pollutant includes any pollutant listed as toxic under section 307(a)(1) of the Clean Water Act. Toxic pollutant also includes those substances or combination of substances, including disease agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the Board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

*Sixth, Sec. 54. Eighth, Sec. 18. Seventeenth, Sec. 72. Twenty-First, Sec. 22.*

**PART 2**  
**PROHIBITIONS AND OPERATIONS**

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Section

§12-201 Prohibitions

§12-202 Exemptions

§12-203 Monitoring

§12-204 Short-Term Noncompliance Reporting

*Eighteenth, Sec. 18.*

**§12-201 PROHIBITIONS**

No person shall directly or indirectly discharge or cause to be discharged from a point source any pollutant into the Waters of the State in the Town without first obtaining a Jay water permit from the Board.

**§12-202 EXEMPTIONS**

A Jay water permit is not required for residential discharges into the Livermore Falls or Jay Municipal Treatment Plants via the sanitary sewer system.

A Jay water permit is not required for commercial and industrial discharges into the Livermore Falls or Jay Municipal Treatment Plants via the sanitary sewer system, provided such discharges existed prior to the enactment of this Ordinance.

**§12-203 MONITORING**

Monitoring done by the permit holder, if requested by the Board, pursuant to Section 3-112, subsection F of this Ordinance, shall conform with test procedures specified in the permit. The Board may specify use of any of the following when appropriate or other generally accepted testing methods approved on a case by case basis:

- A. Sampling procedures and analytical procedures specified in M.D.E.P. Chapter 580, Regulations Relating to Sampling Procedures and Analytical Procedures, as amended, or
- B. The procedures specified in 40 CFR Part 136 as amended.

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In the absence of such procedures, testing shall be done in accordance with the procedures in 40 CFR Part 136 as amended and Chapter 3 of this Ordinance. Modifications to those procedures are permitted only after receiving written approval from the Board.

*Sixth, Sec. 55. Thirteenth, Sec. 56.*

### **§12-204 SHORT-TERM NONCOMPLIANCE REPORTING**

In addition to reporting requirements set forth in Chapter 3, any person owning or operating a facility discharging pollutants to the waters of the State in the Town, shall notify the Board, Code Enforcement Officer or Jay Police Dispatcher by telephone or in person within four (4) hours, and in writing within 48 hours, unless specified otherwise in a Jay Water Permit, in the event that there is noncompliance with any applicable effluent limitation or discharge standard. The written communication shall include:

- a. A description and quantification of the noncompliance and its cause;
- b. Period of noncompliance, including exact date and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

*Tenth, Sec. 33. Eighteenth, Sec. 19.*

## **PART 3**

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### **JAY WATER PERMIT**

Section

- §12-301 Jay Water Permit Application
- §12-302 Conditions in Jay Water Permit
- §12-303 Certain Deposits and Discharges Prohibited

*Twentieth, Sec. 12.*

### **§12-301 JAY WATER PERMIT APPLICATION**

#### **A. Application**

- 1. Existing sources, new sources and modifications.** Application for a first time Jay Water Permit for an existing source and applications for a Jay Water Permit for a new source or for a

modification shall be made in accordance with Chapter 3 of this Ordinance and contain such additional information relating to the discharge as required by this section.

The applicant shall submit the following information:

- a. The activities conducted by the applicant which require it to obtain a permit;
- b. The name, mailing address, and location of the facility for which the application is submitted;
- c. The operator's name, address, telephone number, ownership status, and status as federal, state, municipal, public, private, or other entity;
- d. A listing of all permits or construction approvals previously received or applied for under any federal, state, local, or other permitting program;
- e. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities; and those wells, springs, other surface water bodies, and drinking water wells listed in public records, or otherwise known to the applicant in the map area;
- f. A brief description of the nature of the business;
- g. A line drawing of the water flow through the facility with a water balance;
- h. An engineering narrative identifying each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, stormwater runoff, filter backwash, boiler blowdown, and sanitary flow; the average flow each process contributes; and management practices which minimize the volume of wastewater that needs to be discharged;
- i. Hydraulic and process flow diagrams of the discharger's existing or proposed wastewater facility complete with solids balance;
- j. An analysis of the effluent characteristics including, where appropriate, quantitative data (a sample analyzed in accordance with the analytical methods approved under 40 CFR part 136 as amended) or other generally accepted testing method approved by the Board on a case by case basis;
- k. Results of all monitoring required by any state or federal license(s) or permit(s);
- l. Operating and maintenance records of each process, operation or production area which contributes waste water to the effluent of each outfall;
- m. Records documenting spills, accidental discharges and all other unlicensed discharges and releases;
- n. A description of the treatment the wastewater received, treatment system maintenance procedures and management practices which minimize pollutant load to the receiving waters;

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- o. An analysis of any sludges produced by the existing and/or proposed wastewater facility and a description of the disposal methods to be employed;
- p. A plan view and elevations showing the position of each outfall relative to any buildings, the receiving waters and surrounding terrain; and a description of the outfalls and diffusers to which each discharge is directed;
- q. A description of existing populations of aquatic life, plant life and wildlife which make use of or reside in the receiving waters and a description of the existing human uses of the receiving waters;
- r. A demonstration that the discharge will not threaten the existence of, or impair the growth and reproduction of the existing aquatic life, plant life and wildlife populations and a demonstration that the discharge will not adversely impact existing human uses;
- s. Whole Effluent Toxicity (WET) testing and chemical-specific testing data as set forth in Part 5; and
- t. A description of on-going or planned pollution prevention or reduction programs that may impact the characteristics of the waste water effluent.

**2. Renewals.** Any person seeking to renew a Jay Water Permit shall file an application at least 180 days before the expiration date of the permit. Application for renewal of a Jay Water Permit shall be made in accordance with Chapter 3 of this Ordinance and contain such additional information relating to the discharge as required by this section.

The applicant shall submit the following information:

- a. Any changes to the information submitted in the previous application for a Jay Water Permit necessary to make the information current and accurate;
- b. For the previous five years, results of all monitoring required by any state or federal license(s) or permit(s);
- c. For the previous five years, operating and maintenance records of each process, operation or production area which contributes waste water to the effluent for each outfall;
- d. For the previous five years, records documenting spills, accidental discharges and all other unlicensed discharges and releases;
- e. For the previous five years, any process or water flow changes;
- f. WET testing and chemical-specific testing data as set forth in Part 5; and
- g. A description of the impacts of any pollution prevention or reduction programs on the characteristics of the wastewater effluent and any planned pollution prevention or reduction programs.

**B. Acceptability.** An application for a Jay water permit shall not be deemed acceptable for processing until all information and data required to evaluate the application have been submitted. The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further relevant information and data deemed necessary to evaluate the permit application.

**C. Term of Jay Water Permit.** Permits shall be issued by the Board for a term of not more than 5 years.

**E. Criteria for Granting a Permit.**

1. Any new or existing pulp, paper, or paperboard mill that discharges or may discharge process wastewater pollutants will be subject to effluent limitations which represent the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT). At a minimum, new and existing discharges will not violate any applicable BAT effluent limitations adopted by the United States Environmental Protection Agency pursuant to the terms of the Federal Water Pollution Control Act, as amended, (40 C.F.R. Part 430 and Appendices).

a. The discharge either by itself or in combination with other discharges will not lower the standards of classification of the water body below such classification;

a-1. The discharge either by itself or in combination with other discharges will allow existing in-stream water uses to be maintained and protected;

b. Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected;

c. Where the discharge, either by itself or in combination with other discharges, will lower the existing quality of any body of water within its classification, the Board may only issue a permit if it finds, after opportunity for public participation, that the discharge is necessary to achieve important economic or social benefits. In no event shall the Board permit a discharge which would impair the quality of such water to a level below that allowed by the M.D.E.P. or the United States Environmental Protection Agency or be inconsistent with other provisions of this Ordinance;

c-1. The Board may issue a permit for a discharge affecting a water body in which the standards of classification are not met if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification;

d. The discharge will be subject to effluent limitations which require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents which are discharged directly or indirectly into waters in the Town of Jay. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources which the Board determines are best calculated to protect and improve the quality of the receiving water. In

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determining best practicable treatment for each such category or class, the Board shall consider the then existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives. At a minimum, the discharge will not violate any applicable effluent limitation guidelines adopted by the United States Environmental Protection Agency pursuant to the terms of the Federal Water Pollution Control Act, as amended. (40 C.F.R. Parts 129, 401, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 439, 440, 443, 446, 447, 454, 455, 457, 458, 459, 460, 461, 463, 464, 465, 466, 467, 468, 469, 471);

e. The discharge will not violate the provisions of any federal or state laws or regulations enacted pursuant thereto relating to water pollution control or water quality classification and will not violate the terms of any current license issued by the M.D.E.P. for the discharge;

f. The discharge will not impart color, heat, taste, turbidity, toxicity, radioactivity, or other properties which cause the waters to be unsuitable for the designated uses, existing uses, or characteristics of their classification;

g. The discharge will not cause the pH of fresh waters to fall outside the 6.0 to 8.5 range;

h. For purposes of whether the water quality criteria of Section 12-301(E)(1) will be met discharges of color pollutants from the kraft pulping process must meet the following standards:

(1) Discharges licensed and in existence prior to July 1, 1989 must meet:

- (a) 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis until December 31, 2000; or
- (b) 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis on or after January 1, 2001.

(2) Discharges licensed for the first time after July 1, 1989 must meet 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis.

(3) An individual waste discharge with flows greater than the minimum 30-day low flow that can be expected to occur with a frequency of once in 10 years may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. A discharge meeting this standard is exempt from subparagraph (1), above, so long as that discharge also does not exceed 175 pounds of color pollutants per ton of unbleached pulp produced after January 1, 2001.

i. The discharge will not take place into waters having a drainage area of less than 10 square miles, except that discharges into these waters which were licensed prior to January 1, 1986, shall be allowed to continue only until practical alternatives exist;

j. The discharge will not be a new direct discharge of domestic pollutants to tributaries of Class-GPA waters;

k. The discharge, if into a tributary of GPA waters, will not by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters;

l. A new or increased discharge of domestic pollutants to the surface waters of the state, will be conveyed to and treated in the Jay Municipal Treatment Plant or the Livermore Falls Municipal Treatment Plant.

1-A. For the purpose of determining whether a discharge will violate the classification of any river or stream, the discharge need not be completely mixed with the receiving water, however a reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere shall be provided.

The Board may establish a limited area or volume of water where initial dilution of a discharge takes place, or mixing zone, at the time of application for a waste discharge permit. In making any such determination, the Board shall ensure that:

1. the mixing zone does not impair the classification of the water body as a whole;
2. there is no lethality to organisms passing through the mixing zone;
3. there are no significant health risks, considering likely pathways of exposure;
4. the zone of passage is maintained; and
5. the assimilative capacity of the receiving water in conjunction with the characteristics of the effluent are taken into consideration.

2. In addition to the criteria contained in Section 12-301(E)(1), the following standards must be satisfied:

a. Assimilative Capacity Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

**(1) Rivers and Streams:** For the purposes of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of such river or stream shall be computed using the minimum seven day low flow which occurs once in ten years. Waste discharges shall be appropriately reduced when flows fall below the seven day ten year low flow if the Board determines that such reduction is necessary to maintain the applicable classifications.

**(2) Great Ponds:** The hydraulic residence time will be used to compute the assimilative capacity of great ponds. Hydraulic residence time will be computed by dividing lake volume by the product of watershed area and the precipitation runoff coefficient.

b. Zone of Passage Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

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All discharges of pollutants shall, at a minimum, provide for a zone of passage for free-swimming and drifting organisms. The zone shall not be less than 3/4 of the cross-sectional area at any point in the receiving body of water. Such zone of passage may be reduced whenever the applicant for a discharge can demonstrate that (a) because of physical phenomena in the receiving body of water such minimum zone cannot be maintained and (b) such minimum zone of passage is not necessary to protect organisms in the receiving water from substantial adverse effects, provided that such a reduction does not violate state or federal law or the terms of the discharge license issued by the M.D.E.P. to the applicant.

c. Great Ponds Trophic State Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) generally and Section 12-301(E)(1)(e) will be met.

(1) Trophic state is the ability of a body of water to produce algae and other aquatic plants. The trophic state of a body of water is a function of its nutrient content and may be estimated using the Maine Trophic State Index (TSI) as follows:

### All Lakes

$$\text{TSI} = 70 \log (\text{mean chlorophyll } a + 0.7)$$

Lakes with water color SPU

$$\text{TSI} = 70 \log (.33 \text{ mean total phosphorus} + 0.7) \text{ or,}$$

$$\text{TSI} = 70 \log \left( \frac{105}{\text{mean Secchi disk}} + 0.7 \right)$$

(2) Algal bloom-An algal bloom is defined as a planktonic growth of algae which causes Secchi disk transparency to be less than 2.0 meters.

(3) Stable or decreasing trophic state-A GPA water shall be considered to have stable or declining trophic state unless it exhibits (a) a perceivable and sustained increase in its trophic state as characterized by its Trophic State Index or other appropriate indices, or (b) the onset of algal blooms.

d. Temperature Standards Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) generally and Section 12-301(E)(1)(f) will be met.

No discharge of pollutants shall cause the ambient temperature of the receiving waters to be raised more than 5 degrees Fahrenheit or more than 3 degrees Fahrenheit in the epilimnion of any lake or pond. In no event shall any discharge cause the temperature of the receiving water to exceed 85 degrees Fahrenheit, nor shall such discharge cause the temperature of any waters to exceed the United States Environmental Protection Agency's National Ambient Water Quality Criteria established to protect all species of fish that are indigenous to the receiving waters. Site specific criteria, generated from a study conducted according to DEP approved methods for indigenous species of fish may be substituted for national ambient water quality criteria, so long as the site specific criteria are not less protective of species found to be indigenous to those waters, and so long as the public participation requirements of federal, state and local law are met. When the ambient temperature of any body of water

naturally exceeds the limits set forth in this section, no thermal discharge may be allowed which alone or in combination with other discharges would raise the ambient temperature of the receiving water more than 0.5 Degrees Fahrenheit above the temperature.

e. Water Quality Criteria for Toxic Pollutants Used to Determine Whether the Water Quality Criteria of Section 12-301(E) will be met.

(1) Except as naturally occurs, and in the absence of any specific requirement or standard in this Chapter, ambient levels of toxic pollutants shall not exceed (a) federal water quality criteria as adopted by the United States Environmental Protection Agency under Section 304(a) of the Clean Water Act, (b) state water quality criteria for toxic pollutants, adopted by the M.D.E.P. on a statewide alternative basis pursuant to 38 M.R.S.A. Section 420(2)(B), (c) site specific numerical criteria adopted by the M.D.E.P. pursuant to 38 M.R.S.A. Section 420(2)(B), or (d) statewide numerical criteria or site-specific numerical criteria adopted by the M.D.E.P. pursuant to 38 M.R.S.A. Section 420(C). The Board shall apply relevant criteria and cancer risk level adopted by the M.D.E.P. and shall apply federal criterion and cancer risk level only in the absence of state criteria and cancer risk level.

(2) Limits Required

The Board shall establish appropriate discharge prohibitions, effluent limitations and monitoring requirements in waste discharge permits as needed to control the level of toxic pollutants in surface waters. Appropriate water quality based on effluent limits must be established in the permit if a discharge contains pollutants that are, or may be discharged at levels that cause, have a reasonable potential to cause, or contribute to an ambient exceedence in excess of a numeric or narrative water quality criterion. The permit must also contain appropriate effluent limits to control whole effluent toxicity when discharges cause, have a reasonable potential to cause or contribute to an ambient excursion above the narrative water quality criterion. The whole effluent toxicity limit is the no observed effect level (NOEL). The NOEL (in percent effluent) must be greater than the receiving water concentrations (RWC) (in percent effluent) at the appropriate design flows for both acute (A) and chronic (C) exposures.

$$A\text{-NOEL} > A\text{-RWC}$$

$$C\text{-NOEL} > C\text{-RWC}$$

(3) Determination of Exceedence of Criteria

The Board will review all testing data as received. If these data indicate that the discharge is causing an exceedence of applicable water quality criteria, then: (a) the Board must notify the permit holder of the exceedence; (b) the permit holder must submit a toxics reduction evaluation (TRE) plan for review and approval within 30 days of receipt of notice and implement the TRE plan after Board approval; (c) the Board may modify the waste discharge permit to specify effluent limitations and monitoring requirements necessary to control the level of pollutants at levels meeting receiving water classification standards within 180 days of the Board's approval of the TRE plan.

(4) Water Quality-based Effluent Limit Derivation

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Water quality-based limits must be developed by one or both of the following procedures:

a. Specific pollutant approach

When specific toxic pollutants of known action and interaction are identified in a discharge or potential discharge, the water quality-based effluent limit is determined by use of the applicable numerical water quality criteria for the pollutants and the appropriate dilution.

b. Whole effluent approach

When the existing or proposed discharge contains two or more pollutants whose actions or interactions are unknown or when toxic components cannot be identified, WET effluent limits may be required for the protection of aquatic life. The “acute no observed effect level” (A-NOEL) and the “chronic no observed effect level” (C-NOEL), expressed as percent effluent, must be greater than the actual receiving water concentrations (% of effluent in receiving water at the appropriate stream design flow).

c. Calculation of dilution factors

A simple dilution model using stream design flows must be used to determine allowable effluent limits unless there is information that makes another model approved by the Board more appropriate. Background concentrations will be included in all calculations, using available site data or other data appropriate for the region.

Dilution factors (DF) for freshwater discharges are calculated using the following models:

- (i) If the entire water supply that ultimately makes up the effluent flow ( $Q_e$ ) is taken from the receiving water upstream of the location from which the stream design flow ( $Q_r$ ) is calculated or measures, then:

$$DF = Q_r/Q_e$$

- (ii) If part or all of the water supply is taken from any other location ( $Q_o$ ) is discharged in the effluent, then:

$$DF = (Q_r + Q_o)Q_e$$

d. Stream design flows

Stream design flows used in the analyses of dilution factors from dilution models must be consistent with the exposure of the population at risk to any and all toxic pollutants and shall utilize, when applicable, state and federal guidance.

f. Criteria for Fish and Salmonid Spawning Areas Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

(1) In Class B waters that have been identified as fish spawning areas, no activity may cause the dissolved oxygen concentration to fall below a 7 day mean of 9.5 parts per million or a 1 day minimum of 8.0 parts per million during the period October 1 to May 14 of the following year.

(2) In Class C waters identified as salmonid spawning areas and in which the dissolved oxygen exceeds United States Environmental Protection Agency criteria for salmonid spawning, no activity may cause the dissolved oxygen in these areas to fall below United States Environmental Protection Agency criteria for spawning for the period October 1 to May 14 of the following year.

**(3) Methods of identification of spawning areas:** The Board shall consider as spawning areas all such areas identified by the Commissioner of Inland Fisheries and Wildlife and the M.D.E.P. in connection with the most recent licensing or relicensing of the discharge. The Board shall request the Commissioner of Inland Fisheries and Wildlife to identify additional areas using the following methods:

(a) Identification of areas observed by fishery biologists as being utilized by any of these species for spawning;

(b) Identification of areas as spawning habitat in habitat inventories, river reports or state agency files;

(c) Identification of research findings for the same species in other geographical area from scientific literature and Habitat Suitability Models for presently existing species;

(d) Identification based upon professional opinion of a certified fishery biologist experiences in salmonid ecology. The Board may identify areas in addition to those identified by the Commissioner of Inland Fisheries and Wildlife using methods (a), (b), (c) and (d) above.

g. Maintenance and Protection of Existing In-stream Uses Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) generally and Section 12-301(E)(1)(a-1) will be met.

(1) When existing in-stream use involves use of the water body by a population of plant life, wildlife or aquatic life or as aquatic, wildlife or plant habitat, the applicant must demonstrate that the proposed activity would not have a significant impact on the existing use. "Significant impact" means impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or

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(2) When the existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of any existing level of water quality, the applicant must demonstrate that the proposed activity would not result in significant degradation of the existing use.

(3) The Board shall determine what constitutes a population of a particular species based on the degree of geographic and reproductive isolation from other individuals of the same species.

(4) The Board shall determine what constitutes an existing in-stream water use on a case-by-case basis. The Board shall consider as an existing in-stream use all uses identified as such by the M.D.E.P. or the United States Environmental Protection Agency in connection with the most recent licensing or relicensing of the discharge. The Board shall determine whether any additional uses constitute existing in-stream water uses by considering;

(a) Designated uses for the water body;

(b) Aquatic life present in the water body;

(c) Wildlife that utilize the water body;

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use;

(e) Any other evidence which, for subsections (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for subsection (d), demonstrates its historical or social significance.

h. Color Pollution Control Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

By April 1, 1994, discharges from kraft pulp mills must meet the following standards:

(1) Best practicable treatment.

(a) For discharges licensed and in existence prior to July 1, 1989, 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

(b) For discharges licensed for the first time after July 1, 1989, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; or

(2) Instream color pollution standard. An individual waste discharge may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. Color increases are measured on a calendar quarterly basis.

*First, Sec. 75, 76, 77, 78, 79 and 80. Fifth, Sec. 26. Sixth, Sec. 56, 57, 58, 59 and 60. Eighth, Sec. 19, 20, 21, 22, 23, and 24. Ninth, Sec. 7. Eleventh, Sec. 15. Seventeenth, Sec. 75, 76, 77, 78, 79, 80, 81, 82 and 83. Eighteenth, Sec. 20. Twentieth, Sec. 13, 14, 15 and 17. Twenty-Second, Sec. 40 and 41*

## **§12-302 CONDITIONS IN JAY WATER PERMIT**

The Board may impose any condition(s) which it deems appropriate and reasonable to ensure compliance with effluent limitation and water quality standards and with this Ordinance. In addition to any such conditions imposed by the Board, every Jay Water Permit shall be subject to the following standard conditions and the conditions set forth in Chapter 3:

- A. Employees and authorized representatives of the Town of Jay shall be allowed during normal business hours the right of entry to, upon or through any premises in which an effluent source is located or in which any records required under Chapter 3 or by the Board to be maintained are located, and shall be allowed to perform tests and inspections and examine and copy all records relating to discharges.
- B. The permit holder shall comply with effluent limitations, water quality standards, State laws and regulations, Federal laws and regulations, and this Ordinance.
- C. The permit holder shall take all reasonable steps to minimize or prevent any discharge in violation of such permit which discharge has a reasonable likelihood of adversely affecting human health or the environment.
- D. The permit holder shall maintain records of all water pollution prevention control equipment malfunctions, failures and downtime as well as records of any changes or malfunction of the effluent sources which would create above normal effluent discharges.
- E. Any permit maybe modified, revoked, reissued, or terminated for cause. The filing of a request by the permit holder for modification, revocation and reissuance, or termination or a notification of planned changes or anticipated non-compliance does not stay any permit condition.
- F. The permit holder shall furnish to the Board, within a reasonable period of time any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating such permit or to determine compliance therewith. The permit holder shall also furnish to the Board, upon request, copies of all records required by such permit to be kept.
- G. The permit shall contain applicable WET Testing and Chemical-Specific Testing for Toxic Pollutants and applicable effluent limits, discharge prohibitions or other monitoring requirements.

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H. The permit may contain a requirement for reporting of pollution prevention or reduction programs.

*First, Sec. 81. Tenth, Sec. 34. Fourteenth, Sec. 15. Seventeenth, Sec. 84.*

### **§12-303 CERTAIN DEPOSITS AND DISCHARGES PROHIBITED**

A. Notwithstanding any other provision of this Chapter, no Person shall discharge into the ground water, surface waters, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, or in such a manner that the drainage therefrom may flow into such waters of the Town of Jay, any of the following substances:

1. Dioxin.

a. After July 31, 1998, a bleach kraft pulp mill may not have a detectable quantity of 2,3,7,8-tetrachlorodibenzo-p-dioxin as measured in any internal waste stream of its bleach plant. The detection level is 10 picograms per liter, unless the Board adopts a lower level by order or a lower detection level is used by the Department of Environmental Protection or the United States Environmental Protection Agency.

b. After December 31, 1999, a bleach kraft pulp mill may not have a detectable quantity of 2,3,7,8-tetrachlorodibenzo-p-furan as measured in any internal waste stream of its bleach plant. The Board may extend this time frame up to six months for a mill if the Board determines, based on information presented by the mill, that compliance is not achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons. The detection level is 10 picograms per liter, unless the Board adopts a lower level by order or a lower detection level is used by the Department of Environmental Protection or the United States Environmental Protection Agency. If a mill fails to achieve this requirements, as documented by confirmatory sampling, it shall conduct a site-specific evaluation of feasible technologies or measures to achieve it. This evaluation must be submitted to the Board within 6 months of the date of the confirmatory sampling and include a timetable for implementation, acceptance to the Board, with an implementation date no later than December 31, 2002. The Board may establish a procedure for a confirmatory sampling.

c. After December 31, 2002, a bleach kraft pulp mill may not discharge dioxin into its receiving waters. A bleach kraft pulp mill is considered to have discharged dioxin into its receiving waters if 2,3,7,8-p-tetrachlorodibenzo-p-dioxin or 2,3,7,8-tetrachlorodibenzo-p-furan is detected in any of the mill's internal waste streams of its bleach plant or if levels of dioxin, as defined in 38 MRSA section 420-A, subsection 1, detected in fish tissue sampled below the mill's wastewater outfall are higher than levels in fish tissue sampled at an upstream reference site not affected by the mill's discharge or on the basis of a comparable surrogate procedure approved by the Board. The detection level is 10 picograms per liter, unless the Board adopts a lower level by order or a lower detection level is used by the Department of Environmental Protection or the United States Environmental Protection Agency. The fish-tissue sampling test must be performed with differences between the average concentrations of dioxin in the fish samples taken upstream and downstream from the mill measured with at least 95% statistical confidence. If the mill fails to meet the fish-

tissue sampling-result requirements in this subparagraph and does not demonstrate by Decmeber 31, 2004 to the Board’s satisfaction that its wastewater discharge is not the source of elevated dioxin concentrations in fish below the mill, then the Board may pursue any remedy authorized by law.

d. The internal waste stream of a bleach plant subject to this sub-section must be sampled twice per quarter by the mill. The Board may conduct its own sampling and analysis of the internal waste stream of a bleach plant. Analysis of the samples must be conducted by a 3<sup>r</sup>-party laboratory using methodology approved by the United States Environmental Protection Agency. A mill shall report to the Board the actual laboratory results including sample detection limits on a frequency to be established by the Board. The Board shall assess the mill for the costs of any sampling performed by the Board and any analysis performed for the Board. The Board may reduce the frequency of sampling after 3 consecutive years of sampling have demonstrated the mill does not have a detectable quantity of 2,3,7,8-tetrachlorodibenzo-p-dioxin or 2,3,7,8-tetrachlorodibenzo-p-furan.

2. Radiological, chemical or biological warfare agents.

Radiological,chemical or biological warfare agents or high level radioactive wastes may not be discharged.

3. Toxic or pollutants and substances.

Any other Toxic Pollutants and Substances in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance by the Board.

B. Mercury

No Person shall discharge amounts of mercury that would cause or contribute to receiving water concentrations of mercury that exceed any water quality criteria as developed by the EPA pursuant to section 304(a) of the Clean Water Act.

*Twentieth, Sec. 16. Twenty-First, Sec. 23, 24, 25 and 26.*

**PART 4**  
**WATER QUALITY CLASSIFICATION**

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Section

§12-401 Water Quality Classification

**§12-401 WATER QUALITY CLASSIFICATION**

The Town adopts the water classification program and standards adopted by the State of Maine pursuant to 38 M.R.S.A. Sections 465(3), 465(4), 465-A, 466, 467(1), 468 as amended, as the classifications for the Waters of the State in the Town.

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*First, Sec. 82. Fifth, Sec. 27. Sixth, Sec. 61. Eleventh, Sec. 16.*

### **PART 5**

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### **WET TESTING AND CHEMICAL-SPECIFIC TESTING FOR TOXIC POLLUTANTS.**

#### Section

- §12-501 Applicability
- §12-502 General Requirements
- §12-503 Testing Frequency for Permitted Discharges
- §12-504 Test Organisms
- §12-505 Chemical Specific Testing
- §12-506 Test Schedules
- §12-507 Modified Testing Requirements

*Seventeenth, Sec. 85. Twenty-Second, Sec. 42.*

#### **§12-501 APPLICABILITY**

All industrial dischargers of process wastewater and all publicly operated treatment works (POTWs) discharging to surface waters within the Town of Jay must meet the requirements of this Part. Dischargers of other types of wastewater are subject to this Part when and if the Board determines that toxicity of their effluents may cause or have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria.

*Seventeenth, Sec. 85.*

#### **§12-502 GENERAL REQUIREMENTS**

A. In order to characterize the effluent discharged for purposes of a new waste discharge permit or for a permit renewal all subject dischargers must carry out a toxicity testing program consisting of screening tests and surveillance tests. This testing program must be conducted on effluents representative of normal operating conditions. Where any test demonstrates that a discharge may cause or contribute to an exceedence of a numerical or narrative water quality criterion additional testing must be conducted in accordance with a Board approved toxicity reduction program.

B. Screening tests must be performed during the 12 months preceding each application for a new permit or permit renewal or at least once every 5 years unless directed by the Board. More frequent

testing may be required by the Board in order to properly characterize a discharge in consideration of changed conditions or receiving water requirements. All relevant data available must be submitted at time of permit application. All remaining data necessary for completion of the required program must be submitted within 30 days of collection unless otherwise specified by the Board.

C. Where screening tests demonstrate that a discharge does not cause, have a reasonable potential to cause, or contribute to an exceedence of a numerical or narrative water quality criterion, surveillance tests must be conducted until screening tests are repeated prior to the next permit renewal.

*Seventeenth, Sec. 85. Twenty-Second, Sec. 43 and 44.*

**§12-503 TESTING FREQUENCY FOR PERMITTED DISCHARGES**

A. The basis of this categorization is the relative risk of toxic contamination of receiving water by a discharge. Dilution of the discharge in the receiving water is the primary variable used to determine the testing frequency. In determining dilution for a discharge, the Department shall use the chronic dilution factor as calculated pursuant to 12-301.E.2.e.(5).c. The Board may assign a discharger to a higher testing frequency level if its outfall configuration or local conditions indicate a disproportional increase in the risk of acute toxic effects.

1. Level I - Those dischargers having a chronic dilution factor of less than 20 to 1.
2. Level II - Those dischargers having a chronic dilution factor of at least 20 but less than 100 to 1.
3. Level III - Those dischargers having a chronic dilution factor of at least 100 but less than 500 to 1, or dischargers having a chronic dilution factor of more than 500 to 1 and a permitted flow of 1 million gallons per day or greater.
4. Level IV - Those dischargers having a chronic dilution factor of at least 500 to 1 and a permitted flow of less than 1 million gallons per day.

Screening Level Testing

Level	WET Testing	Priority Pollutant Testing	Analytical Chemistry
I	4 per year	1 per year	4 per year
II	2 per year	1 per year	4 per year
III	1 per year	1 per year	4 per year
IV	1 per year *	1 per year *	4 per year*

Surveillance Level Testing

Level	WET Testing	Priority Pollutant Testing	Analytical Chemistry
I	2 per year	None required	4 per year
II	1 per year	None required	2 per year
III	1 per year	None required	1 per year

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IV

1 per year \*

None required \*

1 per year \*

\*Level IV tests are waived, except that the Board shall require an individual discharger to conduct testing if:

1. The discharger's permit application or information available indicates that toxic compounds may be present in toxic amounts; or
2. Previous testing conducted by the discharger or similar dischargers indicates that toxic compounds may be present in toxic amounts.

B. Required testing must be representative of the discharge and any seasonal or other variations, and must be distributed during the year as follows.

Tests per year	Distribution
4	One test each calendar quarter
2	One test in January to June and one test 6 months later. For surveillance tests, different months will be used in 4 successive years.
1	For surveillance tests, different calendar quarters will be used in 4 successive years.

*Seventeenth, Sec. 85. Eighteenth, Sec. 21. Twenty-Second, Sec. 45.*

### **§12-504 TEST ORGANISMS**

A. Freshwater WET organisms.

Test species for discharges to freshwater are the water flea, *Ceriodaphnia dubia* and the brook trout, *Salvelinus fontinalis* or other salmonid fish species approved by the Board, or other organisms specified by the Board. All WET testing must be reported as a No Observed Effect Level for both acute and chronic levels for each species.

B. The water flea, *Ceriodaphnia dubia* shall be used for all surveillance level testing. The water flea, *Ceriodaphnia dubia* and the brook trout, *Salvelinus fontinalis* or other salmonid fish species approved by the Board, or other organisms specified by the Board shall be used for all screening level testing.

C. WET Testing Procedures.

WET tests must be conducted by an experienced laboratory approved by the Maine Department of Environmental Protection. The laboratory must follow the procedures described in the following USEPA methods manuals, except as modified by the Board on a case by case basis or as described in this section for the Salmonid Survival and Growth Test.

1. EPA Methods Manuals

U.S. Environmental Protection Agency. 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, 5th ed. EPA 821-R-02-012. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the acute method manual)

U.S. Environmental Protection Agency. 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th ed. EPA 821-R-02-013. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the freshwater chronic method manual)

U.S. Environmental Protection Agency. 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd ed. EPA 821-R-02-014. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the marine chronic method manual)

## 2. Salmonid Survival and Growth Test.

The Salmonid survival and growth test must follow the procedures for the fathead minnow larval survival and growth tests detailed in USEPA's freshwater acute and chronic methods manuals (see references above) with the following modifications:

Species - Brook Trout, *Salvelinus fontinalis*, or other salmonid approved by the Department.

Age - Less than six months old for the first test each year and less than twelve months for subsequent tests.

Size - The largest fish must not be greater than 150% of the smallest.

Loading Rate - < 0.5 g/l/day

Feeding rate - 5% of body weight 3 times daily (15%/day)

Temperature -  $12^{\circ} \pm 1^{\circ}\text{C}$

Dissolved Oxygen - 6.5 mg/l ,aeration if needed with large bubbles (> 1 mm diameter) at a rate of <100/min

Dilution Water - Receiving water upstream of discharge (or other ambient water approved by the Board)

Dilution Series - A minimum of 5 effluent concentrations (including the instream waste concentrations bracketing acute and chronic dilutions); a receiving water control; and control of known suitable water quality

Duration - Acute = 48 hours  
 - Chronic = 10 days minimum

Test acceptability - Acute = minimum of 90% survival in 2 days

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- Chronic = minimum of 80% survival in 10 days; minimum growth of 20 mg/gm/d dry weight in controls, (individual fish weighed, dried at 100°C to constant weight and weighed to 3 significant figures)"

*Seventeenth, Sec. 85. Twenty-Second, Sec. 46.*

### **§12-505 CHEMICAL SPECIFIC TESTING**

A. Chemical specific testing refers to analysis for levels of priority pollutants (promulgated according to Section 307 (a) of the CWA) in a permitted discharge. Chemical specific testing also includes "Analytical Chemistry" which refers to a suite of chemical tests for ammonia nitrogen, total aluminum, total cadmium, total chromium, total copper, total hardness, total lead, total nickel, total silver, total zinc, total arsenic, total cyanide and total residual chlorine.

B. Chemical specific analysis for toxic pollutants in addition to the priority pollutants will also be required if the Board has reason to believe that specific discharges contain such compounds in concentrations that may prevent attainment of water quality standards of the waterbody.

C. All chemical-specific testing must be carried out by methods that permit detection of a pollutant at existing levels in the discharge or that achieve minimum levels of detection as specified by the Board.

D. Whenever WET tests and chemical specific tests are both required, tests must be performed on the same sample of effluent.

*Seventeenth, Sec. 85. Twenty-Second, Sec. 47.*

### **§12-506 TEST SCHEDULES**

THIS SECTION INTENTIONALLY LEFT BLANK.

*Seventeenth, Sec. 85. Twenty-Second, Sec. 48.*

### **§12-507 MODIFIED TESTING REQUIREMENTS**

The Board may modify the frequency and scope of toxicity testing. Any modification to the frequency and scope of toxicity testing shall be based on factors such as the relative risk of toxic contamination of receiving water, the characteristics of the wastewater and sludge, and the level or type of treatment and the nature of the receiving water. The Board may rely on state, federal and applicable parts of this Ordinance for guidance in making a determination under this section, including but limited to the following:

A. Established ambient water quality criteria intended to prevent the occurrence of toxic pollutants in toxic amounts as prohibited by both the US Clean Water Act and State law and protect aquatic life and human health;

B. Established aquatic life criteria intended to assure that toxic pollutants are not present in concentrations or amounts that would cause acute and or chronic adverse impacts on organisms in, on or using the surface waters;

C. Established human health criteria intended to assure that toxic pollutants are not present in concentrations or amounts that would cause adverse impact to persons who eat organisms or drink water taken from the surface waters; and/or

D. Established Priority Pollutant water quality criteria and Board established non-Priority Pollutant and/or chemical testing water quality criteria.

*Seventeenth, Sec. 85. Twenty-Second, Sec. 49.*



# CHAPTER 13

## AIR POLLUTION

### Part

1. Short Title and Definitions
2. Prohibitions and Operations
3. Jay Air Emission Permit
4. Ambient Air Quality Standards
5. Emission Standards
6. Offset Requirements
7. Miscellaneous Air Pollution Control Requirements
8. Compliance Assurance
9. Hazardous Air Pollutants

*Seventeenth, Sec. 86.*

### **PART 1**

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#### **SHORT TITLE AND DEFINITIONS**

##### Section

§13-101 Short Title

§13-102 Definitions

#### **§13-101 SHORT TITLE**

This Chapter shall be known and may be cited as “**Jay Environmental Control and Improvement Ordinance-Air**”.

#### **§13-102 DEFINITIONS**

**A. Specific Definitions.** In this Chapter, unless context otherwise requires, the following words and phrases shall have the following meanings:

- 1. Actual emissions.** “Actual emissions” means the actual rate of emissions of a pollutant from an emissions unit. In general, actual emissions as of a particular date shall equal the average rate,

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in tons per year (tpy), at which the unit actually emitted the pollutant. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The source specific allowable emissions for the unit are equivalent to the actual emissions of the unit. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

A. For the purposes of determining baseline emissions from a source, the calendar year 1977 is representative of normal operation, for SO<sub>2</sub> and particulate matter and calendar year 1987 is representative of normal operation for NO<sub>2</sub>, except the Board may allow the use of a different time period upon a determination that it is more representative of normal operation.

B. For the purpose of determining whether a net emissions increase has occurred, the Board shall use the two (2) year period which precedes the application and which is representative of normal operation. The Board may allow the use of a different period upon a determination that it is more representative of normal operation.

**2. Air contaminants.** "Air contaminants" include, but are not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.

**3. Air quality related values (AQRV).** "Air quality related values" means all those values possessed by a Class I area except those that are not affected by changes in air quality and include all those assets of an area whose vitality, significance, or integrity is dependent in some way upon the environment.

**4. Air pollution control apparatus or air pollution control system.** "Air pollution control apparatus or air pollution control system" means and includes any appliance, equipment, or machinery which removes, controls, reduces, eliminates, disposes of or renders less noxious the emission of regulated pollutants or air contaminants into the ambient air.

**5. Allowable emissions.** "Allowable emissions" means the emission rate of an emissions unit or source calculated using the maximum rated capacity of the emissions unit or source, unless the emissions unit is subject to permit conditions which restrict the operating rate, or hours of operation, or both, and the most stringent emission rate applicable to the emissions unit as reflected in the emission permit (including those with a future compliance date) or applicable Town of Jay, state or federal standards, regulations or emission limitation. In no case shall allowable emissions exceed any requirements of 40 CFR Part 60, New Source Performance Standards (NSPS), 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS) or 40 CFR Part 63.

**6. Ambient air.** "Ambient air" means all air outside of buildings, stacks or exterior ducts.

**7. Ambient increment.** "Ambient increment" means, for new sources and modifications, the increase in ambient SO<sub>2</sub>, PM<sub>10</sub>, and NO<sub>2</sub> concentration of the future allowable emissions (the maximum emissions being modeled and permitted) over the baseline concentration of these ambient air pollutants. For existing sources, "ambient increment" means the increase in ambient SO<sub>2</sub>, PM<sub>10</sub>, and NO<sub>2</sub> concentration of the actual current emissions over the baseline concentration of these ambient air pollutants.

**8. Applicable requirement.** “Applicable requirement” means all of the following as they apply to emissions units including requirements that have future-effective compliance dates:

- A. Any standard or other requirement in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the CAA that implements the relevant requirements of the CAA, including any revisions to that plan;
- B. Any requirement enforceable by EPA and the citizens under the CAA that limits emissions for purposes of creating offset credits or for complying with or avoiding Applicable requirements;
- C. Any term or condition of a permit issued for the purpose of preconstruction permitting and requirements contained in regulations approved or promulgated through rulemaking under Title I, including parts C or D of the CAA;
- D. Any standard or other requirement under Section 111 of the CAA, including Section 111(d) (New Source Performance Standards);
- E. Any standard or other requirement under Section 112 of the CAA, including any requirement concerning accident prevention under Section 112(r)(7) of the CAA (National Emission Standards for Hazardous Air Pollutants);
- F. Any standard or other requirement of the acid rain program under Title IV of the CAA or the regulations promulgated thereunder;
- G. Any requirement established pursuant to Section 504(b) or Section 114(a)(3) of the CAA (Monitoring, Enhanced Monitoring and Compliance Certification);
- H. Any standard or other requirement governing solid waste incineration under Section 129 of the CAA;
- I. Any standard or other requirement for consumer and commercial products under Section 183(e) (Federal Ozone Measures) of the CAA;
- J. Any standard or other requirement for tank vessels under Section 183(f) of the CAA;
- K. Any standard or other requirement of the program to control air pollution from outer continental shelf sources under Section 328 of the CAA;
- L. Any standard or other requirement of the regulations promulgated to protect stratospheric zone under Sections 608 or 609 of Title VI of the CAA, and any other standard or other requirement under any other section(s) of Title VI of the CAA that EPA determines is applicable; and
- M. Any national ambient air quality standard or ambient increment, or visibility requirement under Part C of Title I of the CAA, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the CAA.

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**9. Baseline concentration.** “Baseline concentration” means the actual ambient air quality which existed in an area as of: August 7, 1977, for SO<sub>2</sub> and PM<sub>10</sub> and February 8, 1988, for nitrogen dioxide (NO<sub>2</sub>).

For sulfur dioxide (SO<sub>2</sub>) and PM<sub>10</sub>, this term shall include the actual emissions representative of SO<sub>2</sub> and PM<sub>10</sub> sources in existence on August 7, 1977, and the allowable emissions of sources which commenced construction before January 6, 1975, but were not in operation by August 7, 1977.

The following SO<sub>2</sub> and PM<sub>10</sub> emissions shall not be included in the baseline concentration but shall be included in the determination of the applicable maximum allowable increases:

- A. Actual emissions from any source on which construction commenced between January 6, 1975 and August 7, 1977; and
- B. Actual emission increases and decreases at any source occurring after August 7, 1977.

For nitrogen oxides (NO<sub>x</sub>) (measured as NO<sub>2</sub>), this term shall include the actual emissions representative of sources in existence on February 8, 1988. For sources starting operation after February 8, 1985, but prior to February 8, 1988, representative emissions shall be determined after three years of operation and be based on two years of actual emissions more representative of normal operation. NO<sub>x</sub> sources commencing construction by February 8, 1988, but not in operation by that date shall use allowable emissions for baseline concentration until three years after start of operations at which time actual emissions more representative of normal operation for that source shall be determined and used for baseline concentration.

The actual NO<sub>x</sub> (measured as NO<sub>2</sub>) emissions increases or decreases at any source occurring after February 8, 1988, shall not be included in the baseline concentration but shall be included in the determination of the maximum allowable increases, except as specified in the previous paragraph.

**10. Begin actual construction.** “Begin actual construction” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and the construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

**11. Best Available Control Technology (BACT).** “Best Available Control Technology” means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant emitted from or which results from the new or modified emissions unit which the Board on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such emissions unit through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of each pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and 61 or any applicable emission standard established by the Board. If the Board determines that technological or

economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

**12. Best Available Retrofit Technology (BART).** “Best Available Retrofit Technology” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each regulated pollutant which is emitted by an existing facility which emits or has the potential to emit any regulated pollutant at a rate equal to or greater than the emission rates for significant emissions as defined in this Part and which causes visibility impairment. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. If the Board determines that technological or economic limitations on the applicability of measurement methodology to a particular existing facility would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

**13. Best Practical Treatment (BPT).** “Best Practical Treatment” means that method which controls or reduces emissions of regulated pollutants to the lowest possible level considering:

- A. The then existing state of technology,
- B. The effectiveness of available alternatives for reducing emissions from the source being considered, and
- C. The economic feasibility for the type of establishment involved.

**14. Brown stock washer system.** “Brown stock washer system” means brown stock washers and filtrate tanks used to wash the pulp following the digestion system. Diffusion washer systems and washer systems that do not use liquor filtrate for shower water are excluded from this definition.

**15. CAA.** “CAA” means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

**16. Class I significant impact area.** This section intentionally omitted.

**17. Commence.** “Commence”, as applied to the construction of a source or modification, means that the owner or operator has all necessary preconstruction approvals or permits required by local, state or federal air quality control laws and regulations and has either:

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A. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

B. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**18. Construction.** “Construction” means any physical change or change in the method of operation including fabrication, erection, installation, demolition or modification of an emissions unit.

**19. Continuous emission monitor.** “Continuous emission monitor” means the total equipment required for the determination of a gas concentration, pollutant emission rate or opacity reading and the associated data recording equipment (e.g., strip chart, computer dish, magnetic tape, etc.).

**20. Control system.** “Control system” means a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

**21. Curtailment.** “Curtailment” means the partial or temporary removal of equipment or partial or temporary cessation of use of a particular piece of equipment resulting in a partial reduction of emissions.

**22. Digester system.** “Digester system” means each continuous digester or each batch digester used for the cooking of wood in white liquor, and associated flash tank(s), blow tank(s), chip steaming vessel(s).

**23. Emission.** “Emission” means the release of regulated pollutants into the ambient air, or the regulated pollutants so released.

**24. Emission limitation or emission standard.** The terms, “emission limitation” and “emission standard”, mean a requirement which limits the quantity, rate, or concentration of emissions of regulated pollutants on a continuous basis, including the use of specific technology or fuels with specified pollution characteristics or any requirement relating to the operation or maintenance of a source or emissions unit to assure continuous emission reduction.

**25. Emissions unit.** “Emissions unit” means any equipment or pollutant-emitting activity of a source which emits or has the potential to emit a regulated pollutant.

**26. Exempt VOC compounds.** “Exempt VOC compounds” means those compounds which are excluded from the definition of VOC due to their negligible photochemical reactivity.

**27. Facility, building, structure, or installation.** “Facility, building, structure, or installation” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). See also the definition for “source”.

**28. Fuel-burning equipment.** “Fuel-burning equipment” means any furnace, boiler, apparatus, and all appurtenances thereto used in the process of burning fuel, for the primary purpose of producing heat and power, including stationary internal combustion engines.

**29. Fugitive emissions.** “Fugitive emissions” means the release of pollutants to the air which could not reasonably be made to pass through stacks, vents, ducts, pipes, or any other confined air stream. Fugitive emissions include, but are not limited to, fugitive equipment leaks, evaporative losses from surface impoundments, and releases from building ventilation systems.

**30. Gaseous excess emissions.** “Gaseous excess emissions” means any period which the average gaseous emissions, as measured by the continuous emissions monitor, exceeds the applicable emission standard.

**31. General process source or general process equipment.** “General process source” or “general process equipment” means any emission unit, except fuel-burning equipment, incinerators, and mobile sources.

**32. Generally Available Control Technology (GACT) emission limitation.** “Generally Available Control Technology (GACT) emission limitation” means a HAP emission limitation for a source category of HAP area sources that EPA promulgates pursuant to Section 112 of the CAA.

**33. HAP or Hazardous air pollutant.** “HAP or Hazardous air pollutant” means an air pollutant to which no ambient air standard is applicable and which in the judgment of the Board the State of Maine or EPA causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in serious irreversible, or incapacitating reversible, illness or an increase in mortality. This term shall include, but is not limited to, those pollutants for which EPA, the State of Maine or the Town of Jay has established standards, limitations or guidelines.

**34. HAP area source.** “HAP area source” means any stationary source of HAP that is not a HAP major source.

**35. HAP emission limitation.** “HAP emission limitation” is a requirement for a MACT or GACT emission limitation under Section 112(d) of the CAA, a work practice standard under Section 112(h) of the CAA, a case-by-case MACT under Section 112(g) or 112(j) of the CAA, a residual risk standard under Section 112(f) of the CAA, or any other such requirement for HAP control required by EPA, the State of Maine or the Town of Jay.

**36. HAP emission unit.** “HAP emission unit” means any building, structure, or installation that emits HAPs greater than that defined as an insignificant activity unless the HAP emission unit is otherwise subject to an applicable requirement. A HAP emission unit can include a single emission point or collection of points.

**37. HAP major source.** “HAP major source” means any source who emits HAPs in quantities that can be defined as a major source.

**38. Incinerator.** “Incinerator” means any device, apparatus or equipment used for destroying, reducing or salvaging by fire or heat any material or substance,

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- A. Class IA - Direct fed incinerators with a burning rate of up to 75 pounds per hour of type 1, 2 or 3 waste, or any combination of the three waste types;
- B. Class IB - Direct fed incinerators with a burning rate of 75 pounds per hour or over, suitable for type 1, 2 or 3 waste, or any combination of the three waste types;
- C. Class IIA - Flue-fed, single chamber incinerators with more than two (2) square feet burning area, for type 1 or 2 waste, or a combination of the two waste types. This type of incinerator is served by one vertical flue functioning both as a chute for charging waste and to carry the products of combustion to the atmosphere. This type of incinerator has been installed in apartment houses or multiple dwellings;
- D. Class IIB - Chute-fed multiple chamber incinerators, for apartment buildings with more than two (2) square feet burning area, suitable for type 1 or 2 waste, or a combination of the two waste types. (Not recommended for industrial installation). This type of incinerator is served by a vertical chute for charging wastes and has a separate flue for carrying the products of combustion to the atmosphere;
- E. Class III - Municipal incinerators suitable for type 0, type 1, type 2 or type 3 wastes, or any combination of the four wastes, and are rates in tons per 24-hours;
- F. 1. Class IVA - Crematory and pathological incinerators, suitable for type 4 waste, and  
2. Class IVB - Pathological - infections waste incinerators, suitable for type 7 waste; and
- G. Class V - Incinerators designed for specific by-products wastes, type 5 or type 6, or a combination of the two waste types.

Incinerators include smelters, bake-off ovens and other similar units, but do not include boilers or stationary internal combustion units.

**39. Innovative control technology.** “Innovative control technology” means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

**40. Insignificant Activities.** “Insignificant Activities” means activities at a facility that the Board determines to be trivial for permitting purposes utilizing state and federal guidance. A source must include emissions from insignificant activities in determining if the source is a Major Source or Major Modification.

**41. Intermittent Control System (ICS).** “Intermittent Control System” means a dispersion technique which varies the rate at which pollutants are emitted into the atmosphere according to meteorological conditions and/or ambient concentrations of the pollutant, in order to prevent ground-level concentrations in excess of applicable ambient air quality standards. Such a dispersion technique is an ICS whether used alone, used with other dispersion techniques, or used as a supplement to continuous emission control (i.e., used as a supplemental control system).

**42. Intrafacility Emission trading.** “Intrafacility Emission trading” means the transfer of regulated pollutant emissions within a facility that are provided for in the permit and do not require a permit revision.

**43. Leak.** “Leak” means any discharge of liquid or solid, or emission of regulated pollutants, from any confining structure including, but not limited to, stacks, pipes, vents, or ducts, except where allowable emissions pass through the intended outlet for the emissions.

**44. Lowest Achievable Emission Rate (LAER).** “Lowest Achievable Emission Rate” means the more stringent rate of emissions based on the following:

A. The most stringent emission limitation which is contained in the implementation plan of any State for that class or category of source, unless the owner or operator of the proposed source demonstrates that those limitations are not achievable; or

B. The most stringent emission limitation which is achieved in practice by that class or category of source, whichever is more stringent. In no event may LAER result in emission of any pollutant in excess of those standards and limitations promulgated pursuant to the Clean Air Act as amended, or any emission standard established by the State of Maine or Town of Jay.

**45. MACT (Maximum Achievable Control Technology) emission limitation for existing HAP sources.** “MACT emission limitation for existing HAP sources” means the emission limitation pursuant to Section 112 of the CAA reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the EPA, the State of Maine or the Town of Jay, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by HAP sources in the category or subcategory or subcategory to which the standard applies. This limitation shall not be less stringent than the MACT floor.

**46. MACT emission limitation for new HAP sources.** “MACT emission limitation for new HAP sources” means the emissions limitation pursuant to Section 112 of the CAA which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the EPA, the State of Maine, or the Town of Jay taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which the standard applies.

**47. MACT floor.** “MACT floor” means the same as that defined in 40 CFR Part 63.

**48. Major modification.** “Major modification” means:

A. Any modification that would result in a “significant emissions increase” of any regulated pollutant at an existing stationary source that is a major source prior to the modification; or

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B. Any modification at an existing stationary source that is a minor source prior to the modification:

1. which would result in an increase in the source's potential to emit "significant emissions" of any regulated pollutant; or
2. which, by itself, would result in an increase in actual emissions by "significant emissions" of any regulated pollutant.

**49. Major source.** "Major source" means any source which emits or has the potential to emit any regulated pollutant at a rate equal to or greater than the emission rates for significant emissions or is a stationary source or group of stationary sources as described in paragraphs (A), (B) or (C) of this definition. For purposes of paragraphs (B) and (C), major stationary source includes any group of stationary sources belonging to a single major industrial grouping that is located on one or more contiguous or adjacent properties, and that are under common control of the same person (or persons under common control). For the purposes of defining "major source" in paragraphs (B) or (C) of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the air pollutant-emitting activities at such source or group of sources on contiguous or adjacent properties are under common control and belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. In addition, for purposes of paragraphs (B) and (C) of this definition, any stationary source (or group of stationary sources) that supports another source, where both are under common control of the same person (or persons under common control) and on contiguous or adjacent properties, shall be considered a support facility and part of the same source regardless of the 2-digit SIC code for the support facility. A stationary source (or group of stationary sources) is considered a support facility to a source if at least fifty percent (50%) of the output of the support facility is dedicated to the source.

A. Any major source under Section 112 of the CAA (relating to hazardous air pollutants), which is defined as follows:

1. For air pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls in the aggregate, ten (10) tons per year (tpy) or more of any single hazardous air pollutant (HAP) (including any fugitive emissions of such pollutant) which was listed pursuant to Section 112(b) of the CAA, 25 tpy or more of any combination of such HAP (including any fugitive emissions of such pollutants), or such lesser quantity as the EPA may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such emissions units or sources are major sources; or
2. For radionuclides, major source shall have the meaning specified in rules promulgated by the EPA.

B. Any major stationary source of air pollutants or any group of stationary sources as defined in Section 302 of the CAA that directly emits or has the potential to emit 100 tpy or more of any single regulated pollutant (including any fugitive emissions of any such air pollutant, as determined by rule by the EPA). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the CAA or for the purposes of paragraph (C) of this definition, unless the stationary source belongs to one of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 50 tons of refuse/day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combinations thereof) totaling more than 50 million British thermal units per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
27. Any other stationary source categories regulated under Section 111 or 112 of the CAA and for which the EPA has made an affirmative determination under section 302(j) of the CAA, but only with respect to those air pollutants that were regulated for that category.

C. Any major stationary source as defined in Part D of Title I of the CAA, including, but not limited to:

1. For federal ozone nonattainment areas, except sources for which the EPA has made a finding under Section 182(f)(1) or (2) of the CAA that requirements under Section 182(f) of the CAA do not apply, the following sources with the potential to emit:

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- a. one hundred (100) tpy or more of nitrogen oxides (NO<sub>x</sub>) in areas classified as “marginal” or “moderate” or in the ozone transport regions.
  - b. fifty (50) tpy or more of NO<sub>x</sub> in areas classified as “serious,”
  - c. twenty five (25) tpy or more of NO<sub>x</sub> in areas classified as “severe,” and
  - d. ten (10) tpy or more of NO<sub>x</sub> in areas classified as “extreme”;
2. For federal ozone nonattainment areas, the following sources with the potential to emit:
- a. one hundred (100) tpy or more of volatile organic compounds (VOC) in areas classified as “marginal” or “moderate,”
  - b. fifty (50) tpy or more of VOC in areas classified as “serious” or in the ozone transport region,
  - c. twenty five (25) tpy or more of VOC in areas classified as “severe,” and
  - d. ten (10) tpy or more of VOC in areas classified as “extreme”;
3. For particulate matter of less than ten (10) microns (PM<sub>10</sub>) nonattainment areas, sources with the potential to emit seventy (70) tpy or more of PM<sub>10</sub> in areas that are classified as “serious”.

**50. Marginal ozone nonattainment area.** “Marginal ozone nonattainment area” means the area so classified by the EPA, as not meeting or exceeding the National Ambient Air Quality Standard for ozone published at 40 CFR Part 81.

**51. Maximum Achievable Control Technology (MACT) emission limitation.** “Maximum Achievable Control Technology (MACT) emission limitation” means the MACT emission limitation required for new and existing HAP major sources. This emission limitation is either promulgated by EPA pursuant to Section 112 of the CAA, or is determined by the Department of Environmental Protection on a case-by-case basis pursuant to Section 112(g) or (j) of the CAA.

**52. Minor Modification.** “Minor Modification” means any modification that:

- A. would result in less than a significant emissions increase of all regulated pollutants at an existing source that emits or has the potential to emit significant emissions prior to the modification;
- B. would increase the source’s potential to emit by less than significant emissions of all regulated pollutants at an existing stationary source that emits or has the potential to emit less than significant emissions prior to the modification; or
- C. is determined not to be a Minor Change or Major Modification and is subject to permitting as defined in this Chapter.

**53. Minor Change.** “Minor Change” means a permit revision for:

- A. the correction of typographical errors;
- B. the identification of an administrative change;
- C. a change to more frequent monitoring, reporting record keeping or testing requirements;

- D. a modification that results in an emissions increase under four (4) tpy for any one regulated pollutant and under eight (8) tpy of total regulated pollutants, and is determined not to be a Major or Minor Modification and is subject to permitting as defined in this Chapter; or
- E. any other changes determined by the Board to be a Minor Change.

**54. Minor Source.** “Minor source” means any source which emits or has the potential to emit regulated pollutants at rates less than significant emissions and is not otherwise a Major Source.

**55. Moderate ozone nonattainment area.** “Moderate ozone nonattainment area” means the area so classified by the EPA as not meeting or exceeding the National Ambient Air Quality Standard for ozone.

**56. Modification or modified source.** “Modification or modified source” means any physical change in, or change in the method of operation of a source, that would result in the emission of any regulated pollutant not previously emitted, except that:

- A. Routine maintenance, repair, and replacement shall not be considered a physical change;
- B. The following shall not be considered a change in the method of operation:
  - 1. An increase in the production rate at an existing source, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975, and if such increase does not exceed the operating design capacity of the source;
  - 2. An increase in the hours of operation, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
  - 3. Use of an alternative fuel or raw material if prior to January 6, 1975, the source is designed to accommodate and is permitted to use such alternative fuel; and
- C. Replacement of pollution control apparatus shall not be considered a physical change or change in the method of operation for the purposes of this definition, but shall be governed by the requirements found in this Chapter and shall be treated consistent with the CAA and federal regulations.

**57. Net emissions increase.**

- A. “Net emissions increase” means the amount by which the sum of the following exceeds zero:
  - 1. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source;
  - 2. Any other increase and decrease in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable;

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B. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

1. The date five (5) years before construction on the particular change commences; and
2. The date that the increase from the particular change occurs.

C. Any increases or decreases in actual emissions is creditable only:

1. If the EPA has not relied on the increase or decrease in issuing a license for the source under this section and the license of the source which was increased or decreased is not in effect when the increase in actual emissions from the particular change occurs; and
2. To the extent that the new level of actual emissions exceeds the old level;

D. An increase or decrease in actual emissions of nitrogen oxides which occurs before February 8, 1988, is creditable only if it is required to be considered in calculating the maximum allowable increases remaining available; and

E. A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual or allowable emission, whichever is greater;
2. It is enforceable by both the Department and the Administrator of the EPA at and after the time that actual construction on the change begins;
3. It has not been relied upon in issuing any license under regulations approved pursuant to 40 CFR 51 Subpart I, or it has not been relied upon in demonstrating attainment or reasonable further progress; and
4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

F. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

**58. Nitrogen oxide (NO<sub>x</sub>).** “NO<sub>x</sub>” means all oxides of nitrogen, measured as NO<sub>2</sub> on a molar basis.

**59. Nonattainment area.** “Nonattainment area” means an area designated by the Department of Environmental Protection pursuant to Chapter 114 of the Department’s regulations (relating to classification of air quality control regions), or those areas designated by the EPA pursuant to Section 107 of the CAA, in which one or more ambient air quality standards are not being met.

**60. Nonattainment pollutant.** “Nonattainment pollutant” means a regulated pollutant which is the basis for designation of a nonattainment area. For ozone nonattainment areas and the Ozone Transport Region, emissions of VOC and NO<sub>x</sub> shall be considered to be the nonattainment pollutant except where those areas have received a waiver from EPA under Section 185(f) of the CAA.

**61. Nonclassified ozone nonattainment area.** “Nonclassified ozone nonattainment area” means the area so classified by the EPA that has incomplete or no data published at 40 CFR Part 81.

**62. Normal operation.** “Normal operation” means the level of operation that actually occurred or can be reasonably anticipated to occur in meeting the source’s needs or demand over a reasonable period of time. Emissions units that are under construction or are going through initial start up procedures (refractory curing, tube boilout, etc.) have not begun normal operations.

**63. Opacity.** “Opacity” means the degree of light obscuring capability of emissions of visible air contaminants expressed as a percentage. For example, complete obscuration shall be expressed as 100% opacity.

**64. Open burning.** “Open burning” means the burning of any type of combustible material in the open ambient air without being completely enclosed and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct or other device or structure.

**65. Owner or Operator.** “Owner or Operator” means any person who owns, leases, operates, controls or supervises a regulated pollutant source.

**66. Ozone Transport Region.** “Ozone Transport Region” (OTR) means that part of the State of Maine included in a region of states comprised of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, established by Section 184 of the CAA for the control of interstate ozone air pollution. For the State of Maine, the Ozone Transport Region includes all of the counties in the State.

**67. Part 70.** “Part 70” means CAA, Title V operating permit program regulations codified at 40 CFR Part 70.

**68. Particulate matter.** This section intentionally omitted.

**69. Particulate matter.** “Particulate matter” means all finely divided solid or liquid material, other than uncombined water, as measured by applicable reference methods, including but not limited to methods or an equivalent or alternative method.

**70. Petroleum liquids.** “Petroleum liquids” means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

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**71. PM<sub>2.5</sub>.** “PM<sub>2.5</sub>” means particulate matter with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers as measured by applicable reference methods, or an equivalent or alternative method.

**72. PM<sub>10</sub>.** “PM<sub>10</sub>” means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by applicable reference methods, or an equivalent or alternative method.

**73. Pollutant or air pollutant.** “Pollutant or air pollutant” means the same as “air contaminant or regulated pollutant.”

**74. Potential to emit.** “Potential to emit” means the maximum capacity of a stationary source to emit any regulated pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a regulated pollutant, including air pollution control equipment, and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in the determining the potential to emit of a source.

**75. Process weight rate.** “Process weight rate” means the average total weight of all materials, not including any gaseous, liquid or solid fuels, moisture or combustion air, introduced into any manufacturing, industrial or combustion process that may result in the emission of any regulated pollutant to the ambient air, computed on an hourly basis, and shall be expressed in terms of weight per unit of time.

**76. Production area.** “Production area” means a contiguous land area: (1) on which a source is located; (2) where the source regularly conducts activities necessary to the production of goods or services; (3) which is of a size no larger than reasonably necessary to conduct such activities; and (4) from which the general public is excluded by fence or other physical barrier. The term includes but is not limited to: materials handling and storage areas; parking areas; waste water treatment facilities; solid waste disposal areas; and on site buildings and structures.

**77. Reasonable further progress.** “Reasonable further progress” means such annual incremental reductions in emissions of the relevant regulated pollutant as are required by Part D of the CAA or may reasonably be required by the EPA for the purpose of ensuring attainment of the relevant national ambient air quality standards in the area by the relevant statutory deadlines.

**78. Reasonably Available Control Technology (RACT).** “Reasonably Available Control Technology” means that method of treatment that is reasonably available as a retrofit to existing processes or equipment involved and shall be determined by the Board utilizing state and federal guidance for the class or category of such source considering the existing state of technology, current federal guidelines for determining the degree of emission reduction achievable and the type and unique character of affected sources.

**79. Regulated pollutant.** “Regulated pollutant” means the following:

- A. Nitrogen oxides or any volatile organic compounds;
- B. Any pollutant for which a national or Maine or Town of Jay ambient air quality standard has been promulgated;

- C. Any pollutant that is subject to any standard promulgated under Section 111 of the CAA;
- D. Any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA;
- E. Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the CAA, including sections 112(g), (j), and (r) of the CAA, including the following:

1. Any pollutant subject to requirements under section 112(j) of the CAA. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the CAA, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the CAA; and

2. Any pollutant for which the requirements of section 112(g)(2) of the CAA have been met, but only with respect to the individual source subject to section 112(g)(2) requirements.

- F. Any pollutant, including hazardous air pollutant, for which a regulation or standard has been adopted by the Maine Board of Environmental Protection or Town of Jay.

**80. Resource Recovery Facility.** “Resource Recovery Facility” means any building, structure or installation where municipal wastes are incinerated to produce useable energy.

**81. Secondary emissions.** “Secondary emissions” means emissions which occur as a result of the construction or operation of a source or modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions include, but are not limited to: (1) emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the source or modification; (2) emissions from ships, trains, trucks or other mobile sources associated with the new source or modification.

**82. Significant emissions.** “Significant emissions” means any rate of emissions that would equal or exceed one hundred (100) tons per year of any regulated pollutant or fifty (50) tons per year of VOC in the OTR.

**83. Significant emissions increase.** “Significant emissions increase” means a major modification which results in:

- A. Any net emissions increase of a regulated pollutant that would equal or exceed any of the rates listed:

Regulated Pollutant	Rates (TPY)
Particulate matter	25
PM <sub>10</sub>	15
Sulfur dioxide	40
Nitrogen oxides	40
Nitrogen oxides (as precursor to ozone)	40
Carbon monoxide	100

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Ozone (measured as VOC)	40
Ozone (measured as VOC) in the OTR	40
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1
Vinyl chloride	1
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H <sub>2</sub> S)	10
Total reduced sulfur (including H <sub>2</sub> S)	10
Reduced sulfur compounds (including H <sub>2</sub> S)	10
Chromium	0.2
MWC organics (Municipal Waste Combuster measured as total tetra-through octachlorinated dibenzo-p- dioxins and dibenzofurans)	3.5 x 10 <sup>-6</sup>
MWC metals (measured as particulate matter)	15
MWC acid gases (measured as SO <sub>2</sub> and HCl)	40

B. Any emission rate of a new source which would construct within ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one (1) microgram per cubic meter ( $ug/m^3$ ) (24-hour average) of PM<sub>10</sub>, SO<sub>2</sub>, or NO<sub>x</sub>.

C. Any emission rate of a modification that is equal to the difference of the current and future licensed potential to emit rates which is located within ten (10) kilometers of a Class I area and would have an impact on such area equal to or greater than one (1) microgram per cubic meter ( $ug/m^3$ ) (24-hour average) of PM<sub>10</sub> or SO<sub>2</sub>, or NO<sub>x</sub>.

**84. Significant impact.** “Significant impact” means the contribution for all regulated pollutants which is equal to or greater than, or may reasonably be expected to be equal to or greater than, the levels shown below for respective averaging times:

Pollutant	Averaging Time				
	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SO <sub>2</sub>	1.0 $ug/m^3$	5 $ug/m^3$		25 $ug/m^3$	
PM <sub>10</sub>	1.0 $ug/m^3$	5 $ug/m^3$			
NO <sub>2</sub>	1.0 $ug/m^3$				
CO			500 $ug/m^3$		2000 $ug/m^3$

These significant impact levels are only applicable to Class II areas. The Board may require modeling of impacts in Class I areas beyond the significant impact area.

**85. Significant impact area.** “Significant impact area” is a circular area with a radius extending from the source to the most distant point where approved dispersion modeling predicts a significant impact will occur, or a modeling receptor distance of fifty (50) kilometers (km), whichever is less. The significant impact area used for the air quality analysis of a particular regulated pollutant is the largest area of all averaging periods modeled as determined for that regulated pollutant.

**86. Solid waste fuel.** “Solid waste fuel” when burned as fuel in solid waste fuel-burning equipment, means any material, other than primary fossil fuel, including without limitation, garbage, refuse, sludge from a waste treatment plant or air pollution control facility, sawdust, shavings, chips, bark, slabs or inert fill material.

**87. Solid waste fuel-burning equipment.** “Solid waste fuel-burning equipment” means any furnace, boiler, or apparatus and all appurtenances thereto, capable of burning solid waste fuel for the primary purpose of producing thermal energy.

**88. Source.** “Source” means any building, structure, facility, or installation which emits or may emit any regulated pollutant.

**89. Stack.** “Stack” means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

**90. Temporary source.** “Temporary source” means a source which changes location to another site at least once during any five (5) year license period.

**91. Total reduced sulfur (TRS).** “Total reduced sulfur (TRS)” means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during the Kraft pulping operation.

**92. Total Suspended Particulate (TSP).** This section intentionally omitted.

**93. Venting of TRS.** “Venting of TRS” means the direct release of gases which contain TRS to the atmosphere in excess of five (5) parts per million (ppm) by volume dry basis from any digester system, multiple-effect evaporator system, condensate stripper system, or from any brown stock washer system and which are not combusted in a lime kiln, recovery furnace, incinerator or other combustion device, or are not controlled by a means other than combustion, as specified by this chapter.

**94. Volatile Organic Compounds (VOC).** “Volatile Organic Compounds” means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This definition excludes the following organic compounds which have been determined to have negligible photochemical reactivity:

- methane;
- ethane;
- acetone;
- parachlorobenzotrifluoride;
- cyclic, branched, or linear completely methylated siloxanes;

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methylene chloride (dichloromethane);  
1,1,1-trichloroethane (methyl chloroform);  
1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113);  
trichlorofluoromethane (CFC-11);  
dichlorodifluoromethane (CFC-12);  
chlorodifluoromethane (CFC-22);  
trifluoromethane (CFC-23);  
1,1-difluoro-1-chloro-2,2-difluoro-2-chloroethane (CFC-114);  
chloropentafluoroethane (CFC-115);  
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);  
1,1,1,2-tetrafluoroethane (HFC-134a);  
1,1-dichloro-1-fluoroethane (HCFC-141b);  
1-chloro-1,1-difluoroethane (HCFC-142b);  
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);  
pentafluoroethane (HFC-125);  
1,1,2,2-tetrafluoroethane (HFC-134);  
1,1,1-trifluoroethane (HFC-143a);  
1,1-difluoroethane (HFC-152a);  
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);  
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);  
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);  
difluoromethane (HFC-32);  
ethylfluoride (HFC-161);  
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);  
1,1,2,2,3-pentafluoropropane (HFC-245ca);  
1,1,2,3,3-pentafluoropropane (HFC-245ea);  
1,1,1,2,3-pentafluoropropane (HFC-245eb);  
1,1,1,3,3-pentafluoropropane (HFC-245fa);  
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);  
1,1,1,3,3-pentafluorobutane (HFC-365mfc);  
chlorofluoromethane (HCFC-31);  
1-chloro-1-fluoroethane (HCFC-151a);  
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);  
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);  
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane  
(CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>);  
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);  
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane  
(CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);  
methyl acetate; and  
perfluorocarbon compounds which fall into these classes:  
cyclic, branched, or linear, completely fluorinated alkanes;  
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;  
cyclic, branched, or linear, completely fluorinated tertiary amines with no  
unsaturations; and  
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds  
only to carbon and fluorine.

VOC may be measured by applicable test methods including but not limited to methods identified under 40 CFR Part 60. Where such a method also measures compounds with

negligible photochemical reactivity, these negligibly-reactive compounds shall not be considered VOC if the amount of such compounds can be and is accurately quantified.

**95. Waste.** “Waste” means refuse, garbage, rubbish, trash or unwanted or discarded materials of any kind and source which shall be classified as follows:

- A. Type 0 - Trash, a mixture of highly combustible waste such as paper, cardboard, cartons, wood boxes and combustible floor sweepings, from commercial and industrial activities. The mixtures contain up to ten (10)% by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber scraps. This type of waste contains about ten (10)% moisture and five (5)% incombustible solids and has a heating value of approximately 8500 British thermal units (BTU) per pound as fired;
- B. Type 1 - Rubbish, mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage and combustible floor sweepings, from domestic, commercial and industrial activities. The mixture contains up to twenty (20)% by weight of restaurant or cafeteria waste, but contains little or no treated papers, plastic or rubber wastes. This type of waste contains about 25% moisture and 10% incombustible solids and has a heating value of approximately 6500 BTU per pound as fired;
- C. Type 2 - Refuse, consisting of an approximately even mixture of rubbish and garbage by weight. This type of waste is common to apartment and residential occupancy, consisting of up to fifty (50)% moisture, seven (7)% incombustible solids, and a heating value of approximately 4300 BTU per pound as fired;
- D. Type 3 - Garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets and like installations. This type of waste contains up to seventy (70)% moisture, and up to five (5)% incombustible solids and has a heating value of approximately 2500 BTU per pound as fired;
- E. Type 4 - Human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds, and similar sources, consisting of up to 85% moisture, five (5)% incombustible solids and having a heating value of approximately 1000 BUT per pound as fired;
- F. Type 5 - By-product waste, gaseous, liquid or semi-liquid such as tar, paints, solvents, sludge, fumes, etc. BUT values must be determined by the individual materials to be destroyed;
- G. Type 6 - Solid by-product waste, such as rubber, plastics, contaminated wood waste, etc. BTU values must be determined by the individual materials to be destroyed; and
- H. Type 7 - Infectious Waste - Commonly referred to as red bag waste, this includes surgical, obstetrical, biological, isolation, blood and blood product, renal dialysis, serums and vaccines, laboratory, and “sharps” (potentially infectious articles that may cause punctures or cuts, including intravenous tubes with needles attached) waste. Also included are animal carcasses and body parts, bedding and other wastes from animals re-exposed to pathogens and human tissues and anatomical parts which emanate from surgery, surgical

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procedures, autopsy, and laboratory. This term shall not include radiologically contaminated materials.

**B. General Definitions.** In addition, Chapter 1 contains general definitions applicable throughout this Ordinance.

*First, Sec. 83, 84, 85, 86, 87, 88, 89, 90 and 91. Fifth, Sec. 28, 29, 30 and 31. Sixth, Sec. 62 and 63. Eighth, Sec. 25. Eleventh, Sec. 17 and 18. Thirteenth, Sec. 57. Fifteenth, Sec. 4. Seventeenth, Sec. 87. Eighteenth, Sec. 22 and 23. Twentieth, Sec. 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28.*

## **PART 2**

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### **PROHIBITIONS AND OPERATIONS**

#### Section

- §13-201 Prohibitions
- §13-202 Exemptions
- §13-203 Open Burning
- §13-204 Ambient Air Monitoring
- §13-205 Short-Term Noncompliance Reporting
- §13-206 Reporting

*Seventeenth, Sec. 88. Eighteenth, Sec. 24.*

### **§13-201 PROHIBITIONS**

A. No person shall emit or cause to be emitted regulated pollutants or air contaminants from any source into the ambient air of the Town of Jay without a Jay air emission permit from the Board unless the source is exempt.

B. No person shall commence construction of any source or modify an existing source without a permit unless the source is exempt.

C. Sulfur content of fuel

1. No person may use any liquid fossil fuel with a sulfur content greater than 2.0% by weight.
2. No person may use any solid fossil fuel with a sulfur content greater than 0.96 pounds sulfur per million British Thermal Units.
3. Flue gas desulfurization. Any source that installs any approved flue gas desulfurization system or other prescribed sulfur removal device shall be permitted to use fuel with a sulfur

content in excess of the limitations of subsections 1 and 2 such that, after control, total sulfur dioxide emission do not exceed 1.92 pounds of sulfur dioxide per million British Thermal Units in any 24-hour period.

4. Electrical generating facilities. Any electrical generating facility owned or operated by a regulated electric utility may use liquid fossil fuel with a sulfur content of up to 2.5% by weight provided that the facility has operated at an average of not more than 20% of its capacity factor over the most recent 4-year period. This exemption is not applicable to the ambient air quality provisions of this chapter.

D. No person may discharge air contaminants to the ambient air in an amount or concentration that soils or damages property or has an adverse effect on the public health, safety or welfare.

*Sixth, Sec. 64. Eleventh, Sec. 19. Thirteenth, Sec. 58. Seventeenth, Sec. 89., Twentieth, Sec. 29.*

## §13-202 EXEMPTIONS

### A. Exemptions.

An air emission permit is not required for the following sources, except that once a source requires a Jay air emission permit, all emissions at the source must be included. In no case shall these exemptions apply when determining whether a source is a Major Source or Major Modification.

- a. Fuel-burning equipment (or combinations thereof), whose total maximum design heat input is less than 10.0 million British Thermal Units per hour. Fuel-burning equipment, excluding stationary internal combustion engines, less than 1.0 MMBtu/hr shall not be included in this threshold assessment and stationary internal combustion engines less than 0.5 MMBtu/hr shall not be included in its threshold assessment;
- b. Stationary internal combustion engine (or combinations thereof) whose total maximum design heat input is less than 5.0 million British Thermal Units per hour, or a gas/propane fired stationary internal combustion engine (or combinations thereof) with a total maximum design heat input of less than 10.0 million British Thermal Units per hour which demonstrates that the maximum design capacity is physically limited to generate 25 tons/year or less. Units less than 0.5 MMBtu/hr shall not be included in this threshold assessment;
- c. Incinerators which are classified as Class IA;
- d. Incinerators which have a total combined burner maximum design heat input less than 1.0 MMBtu/hr for the auxiliary fuel, not to include incinerators which are classified as Class IVA and Class IVB;
- e. Total facility general process sources whose emissions without consideration of air pollution control apparatus and under normal operation are less than 100 lb/day or 10 lb/hr of any regulated pollutant except that these numerical limitations may not apply to a source which is subject to regulation for the control of hazardous air pollutants under federal, state or Town of Jay standards, limitations or requirements;

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- f. Units whose emissions are generated from the sole function of providing power for propulsion of mobile sources, including vessels;
- g. Bulk gasoline terminals and gasoline service stations with a maximum design daily throughput of less than 20,000 gallons;
- h. Bulk petroleum storage facilities with petroleum products stored in tanks with a maximum design capacity of less than 39,000 gallons;
- i. Sources whose potential to emit without consideration of air pollution control apparatus is less than 0.6 ton of lead per year;
- j. Any change to a source presently exempt from permitting unless that change increases the total capacity of the source to greater than the exemptions provided for in this section;
- k. Dry cleaner system that engages in the cleaning of fabric by means of one or more washes in perchloroethylene, extraction of the solvent by spinning, and drying by tumbling in an air stream; and
- l. Sawing of wood and supporting wood handling systems.

### **B. Optional.**

Any source listed in this subsection that is exempted from the requirements to obtain an air emission permit may opt to apply for a permit under this Chapter.

### **C. Insignificant Activities.**

A source not otherwise exempt may petition the Board for a determination that an emission is an insignificant activity and is therefore exempt from obtaining an air emission permit.

*First, Sec. 92. Seventeenth, Sec. 90. Eighteenth, Sec. 25.*

## **§13-203 OPEN BURNING**

- A. The following open-burning activities and materials shall be prohibited.
  - 1. Open burning of tires, rubber products, asphalt shingles, industrial leather scraps, and wire insulation.
  - 2. Open burning of solid waste materials, other than brush and demolition debris, at the Jay solid waste disposal site.
  - 3. Residential open burning of highly combustible household trash, rubbish, refuse, garbage, human and animal remains and by-product waste such as tar, paints, solvents, and sludge.
  - 4. No person may engage in any open burning except in conformity with subsections B and C.

### **B. Permissible open burning with permit.**

The following types of burning are permissible if a permit has been obtained from the fire warden, forest ranger or Jay Fire Department, so long as the burning is conducted according to the terms and conditions of the permit and provided that no nuisance is created:

1. Recreational campfires kindled when the ground is not covered by snow;
2. Fires in conjunction with holiday and festive celebrations;
3. Burning of solid or liquid fuels and structures for the purpose of research or bona fide instruction and training of municipal, volunteer, and industrial fire fighters in methods of fighting fires when conducted under the direct control and supervision of qualified instructors and with a written objective for the training. For purposes of this section, "qualified instructor" means the fire chief or designee or a fire-fighting instructor. Structures burned for instructional purposes must be first emptied of waste materials that are not part of the training objective;
4. Burning for agricultural purposes which include, but are not limited to, open burning of blueberry fields, potato tops, hayfields and prescribed burning for timberland management;
5. Residential open burning of leaves, brush, deadwood, and tree cuttings accrued from normal property maintenance by the individual land or homeowner or lessees thereof;
6. Burning on site for the disposal of wood wastes and lead-free painted and unpainted wood from construction and demolition debris generated from the clearing of any land or erection, modification, maintenance, demolition or construction of any highway, railroad, power line, communication line, pipeline, building, or development, either on site, or at the Jay solid waste disposal facility where open burning of that material is not expressly prohibited;
7. Burning of vegetative growth for hazard abatement purposes such as, but not limited to, the burning of grass fields;
8. Burning for the containment or control of spills of gasoline, kerosene heating oil, or similar petroleum product;
9. The burning of brush and demolition debris at Jay's solid waste disposal facility if permitted by the facility's permit;
10. The burning of empty containers, including fireboard boxes and paper bags, previously containing explosives and being disposed of in accordance with 25 M.R.S.A. § 2472; and
11. Explosives being disposed of under the direct supervision and control of the State Fire Marshal.

### **C. Permissible open burning without permit.**

The following types of burning are permissible without permit so long as no nuisance is created:

1. Recreational campfires kindled when the ground is covered by snow or on frozen bodies of water;

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2. Residential use of outdoor grills and fireplaces for recreational purposes such as preparing food; and
3. Use of outdoor grills and fireplaces for recreational purposes such as preparing food at commercial campgrounds as long as commercial campgrounds are licensed by the health engineering division of the Department of Human Services.

*First, Sec. 93, 94 and 95. Tenth, Sec. 35 and 36. Eleventh, Sec. 20 and 21. Seventeenth, Sec. 91 and 92. Twenty-Second, Sec. 50.*

### **§13-204 AMBIENT AIR MONITORING**

Monitoring done by the permit holder, if requested by the Board pursuant to Section 3-112, subsection F of this Ordinance, shall conform to test procedures specified in the permit and in the absence of such procedures, with the requirements of 40 CFR Part 58, Appendix B, as amended, and Chapter 3 of this Ordinance. Modifications to these procedures are permitted only after receiving written approval from the Board.

*First Sec. 96. Thirteenth, Sec. 59. Seventeenth, Sec. 93.*

### **§13-205 SHORT-TERM NONCOMPLIANCE REPORTING**

In addition to reporting requirements set forth in Chapter 3, any person owning or operating any source discharging air contaminants to the air of the State in the Town, shall notify the Board, the Code Enforcement Officer or Jay Police Dispatcher by telephone or in person within four (4) hours, and in writing within 48 hours, unless specified otherwise in a Jay air emission permit, in the event there is noncompliance with any applicable emission limit. If the noncompliance relates to exceedences of opacity limits only, the permit holder shall report such noncompliance in writing within 48 hours and need not comply with 4 hour notification. The written communication shall include:

- a. A description and quantification of the noncompliance and its cause;
- b. Period of noncompliance, including exact date and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

*First, Sec. 97. Tenth, Sec. 37. Eighteenth, Sec. 26.*

### **§13-206 REPORTING**

Reporting shall be done by the permit holder in accordance with Chapter 3, this Chapter and the requirements of any permit.

*Seventeenth, Sec. 95.*

## **PART 3**

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### **JAY AIR EMISSION PERMIT**

#### Section

- §13-301 Jay Air Emission Permit Application
- §13-302 Permit Renewal
- §13-303 Major Modifications and New Major Sources
- §13-304 Minor Modifications and New Minor Sources
- §13-305 Minor Change
- §13-306 Permit Transfer
- §13-307 Ambient Air Quality Analysis

*Seventeenth, Sec. 96. Eighteenth, Sec. 27.*

#### **§13-301 JAY AIR EMISSION PERMIT**

##### **A. Projects requiring multiple application submittals under this Chapter**

If a source is applying simultaneously for the renewal of a permit and/or amendments under more than one section of this Chapter, the source may submit one application covering all required information for all relevant sections.

##### **B. Required application form and additional information**

The application shall include an application form prescribed by the Board and additional information required by the Board, unless otherwise specified by this Chapter. Prior to or during application preparation and submittal, an applicant may request in writing that the Board determine if certain air emitting activities or groups of activities are insignificant activities according to 13-102(A)(40). The application may not omit information needed to determine the applicability of, or to impose, any requirement. An application for a Minor Modification, Major Modification or Minor Change need supply only that information related to the proposed amendment. The application form and the additional required information shall include, but is not limited to, the following elements:

1. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, responsible official's name, and telephone number and names of plant site manager/contact;
2. Identification of the source's processes and products;

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3. Any insignificant activities that must be listed in the application as specified under Town of Jay, State of Maine or federal law or regulation;
4. The following emissions related information for units and activities that are not insignificant activities (the Board may waive the requirement to submit any or all of items (a)-(h) if the information required is deemed not pertinent to the application):
  - a. All emissions of regulated pollutants including fugitive emissions;
  - b. Any additional emissions-related information necessary to verify which requirements are applicable to the source;
  - c. Identification and description of all points of emissions described in (a) and (b) above in sufficient detail to establish the source's applicability to any requirements;
  - d. Emission rates in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable reference test methods and compliance consistent with the applicable emission limit;
  - e. The following information to the extent it is needed to determine or regulate emissions: fuel types, fuel use, raw materials, production rates, and operating schedules;
  - f. Identification and description of air pollution control equipment and compliance monitoring devices or activities and, if requested by the Board, operating and maintenance records for air pollution control apparatus and monitoring equipment;
  - g. Limitations on source operation affecting emissions, or any work practice standards, where applicable, for all regulated pollutants; and
  - h. Calculations used as the basis for emissions-related information.
5. The following air pollution control requirements:
  - a. Citation and description of all Applicable requirements and State of Maine requirements;
  - b. Citation and description of all Town of Jay requirements; and
  - c. Description of or reference to any applicable test method relating to each Applicable requirement, State of Maine and Town of Jay requirements;
6. Other specific information that may be necessary to implement and enforce other Applicable requirements of the CAA, Town of Jay requirements and State of Maine requirements or to determine the applicability of such requirements.
7. An explanation of any proposed exemptions from otherwise Applicable requirements, State of Maine requirements and Town of Jay requirements;
8. Additional information as determined to be necessary by the Board to define alternative operating scenarios identified by the applicant or to define terms and conditions allowing intrafacility emissions trading;

9. A description of the source category or categories which are applicable to the source, HAP emissions unit(s) requiring HAP emission limitations, and whether the HAP emission unit(s) require a MACT emission limitation for an existing or new HAP source;
10. An Assured Compliance Plan in accordance with Part 8;
11. A compliance certification in accordance with Part 8;
12. Such other facts or information that the Board may require to determine the compliance status of the source;
13. Any other information that may be necessary to implement and enforce any Town of Jay, state or federal requirements applicable to the source;
14. If required by the Board, proposed monitoring, modeling, testing, record keeping and reporting protocols, the results of previously performed instack monitoring, and results of previously performed stack testing;
15. Results of meteorology or air quality monitoring if required by the Board, including an analysis of meteorological and topographical data necessary to evaluate air quality impacts;
16. If any regulated pollutant from an existing source has or will have a significant impact, a description of the factors used in the ambient air quality impact analysis; and
17. Emission statements submitted to the MDEP within the previous 5 years.

In lieu of a Town of Jay form, an applicant may use a Part 70 application form for a Part 70 License as administered by the Maine Department of Environmental Protection, provided all necessary information required by this Chapter is included.

**C. Term of a permit**

Each Jay air permit issued by the Board shall have a term of no longer than five (5) years after the date of issuance.

**D. Expiration of a permit**

If an acceptable renewal application as determined by the Board, is submitted and according to Chapter 1, then all terms and conditions of the permit shall remain in effect until the Board takes final action on the application for renewal of the permit. The provisions of this subsection do not bar enforcement action pursuant to Chapter 4A or 4B of the Ordinance.

Failure to submit a timely and acceptable application prior to expiration of the permit renders the permit expired and the owner or operator is considered to be operating and maintaining an air contamination source without a permit from the Board, in violation of this Chapter.

**E. Source obligation**

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Approval to construct a new source or modification, or an exemption under this Chapter shall not relieve any owner or operator of a source from the responsibility to comply fully with any Town of Jay, state or federal requirements applicable to the source.

### **F. Inspections to verify information**

Employees and authorized representatives of the Board shall be allowed safe access to the permit holder's premises during business hours, or at any time during which any emissions units are in operation, and at such other times as the Board deems necessary for the purpose of performing tests, collecting samples, conducting inspections, or examining and copying records relating to emissions.

### **G. Replacement of Air Pollution Control Systems**

If a permit holder is proposing to replace an existing air pollution control system, including the replacement of oil burner guns, the applicant must demonstrate to the Board that the new air pollution control system will achieve BPT. The replacement may be proposed within the renewal application or as a Minor Change.

### **H. HAP emissions**

In accordance with this Chapter, the Board may control HAP by adopting emission limits, design equipment, work practices or operational standards for activities emitting hazardous air pollutants.

### **I. Other Provisions**

Applicants for permit renewals, for new Major Sources, for Major Modifications for New Minor Sources, for Minor Modifications, for Minor Changes, and for permit transfers shall also comply with other relevant sections of Chapter 13.

*First Sec. 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and 127. Sixth, Sec. 13. Eighth, Sec. 26. Eleventh, Sec. 22. Thirteenth, Sec. 60. Fourteenth, Sec. 16. Seventeenth, Sec. 97. Eighteenth, Sec. 28, 29, 30 and 31. Twenty-Second, Sec. 51.*

## **§13-302 PERMIT RENEWAL**

### **A. Applicability**

The following procedures shall be used for existing sources applying for the renewal of a permit.

### **B. Schedule**

If the applicant is applying for a renewal of a permit, a complete application must be submitted prior to the expiration date of the existing permit in accordance with this Chapter and Chapter 1 of the Ordinance.

### **C. Required Application Information**

For a renewal of a permit, the applicant shall submit to the Board the information listed below:

1. The application form and information as specified in Section 13-301 of this Chapter, containing all required information;
2. The last complete application and support documents with all new information indicated and any proposed alternative operating scenarios. New material appended to the application may be limited to any changes that may have occurred since the time of previous permit issuance.
3. A Best Practical Treatment (BPT) analysis as described below:

#### BPT

Emissions from existing sources undergoing renewal of a permit shall be deemed to be receiving best practical treatment if those emissions are being controlled by pollution control apparatus that has been approved by the Board and which has been installed less than 15 years prior to the date of permit application approval, or if those emissions are being controlled in a manner consistent with emission controls commonly used in sources of similar age and design in similar industries. BPT may require the use of additional instrumentation, operating practices, best management practices, fuel content requirements, good combustion techniques, automated process controls, upgrading of component parts, emissions testing, requirements for continuous emission monitors, maintenance programs for air pollution control equipment, or recordkeeping to demonstrate performance of air pollution control systems or other mitigating measures.

For emissions from existing sources for which BPT was determined less than 15 years prior to the date of permit application approval, the applicant shall submit a summary of the pollution control apparatus for those emission sources.

BPT was determined 15 years or more prior to the date of permit application approval, the applicant must demonstrate that each emissions units is receiving BPT and such demonstration shall consider the emission limit for which the air pollution control system was designed, the emission limitations adopted by the Board and in effect at the time of submission of an application for renewal, as well as the reliability, age, and life expectancy of the air pollution control system.

BPT shall not require the use of a lower sulfur content unless a lower sulfur fuel is required to comply with the applicable emissions standards or applicable ambient air quality standards.

BPT shall not force replacement of existing air pollution control equipment on the basis that more efficient or reliable air pollution control equipment is available at the time of renewal. However, BPT may require replacement with more efficient or reliable air pollution control equipment under the following conditions:

- i. The applicant is proposing replacement of the existing air pollution control equipment;
- ii. Any emissions unit violates an applicable emission limitation;
- iii. Additional reductions are necessary to achieve or maintain ambient air quality standards;
- iv. The Board determines that previously uncontrolled emissions should be controlled in order to prevent an unreasonable risk to the environment or public health;

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- v. The Board determines that previously controlled emission should be controlled to a greater efficiency considering the toxicity of regulated pollutants; or
- vi. Additional reductions are necessary to restore ambient increment even if that ambient increment was previously authorized to the owner or operator of an existing source.

### 4. Reasonably Available Control Technology (RACT).

The applicant for an existing source located in, or whose emissions of a federal nonattainment pollutant result in a significant impact to any federal nonattainment area, shall include a summary of the conditions the source complies with to meet RACT requirements.

### 5. Best Available Retrofit Technology (BART).

An existing source with emissions that the Board or Maine Department of Environmental Protection has determined to cause adverse impact on visibility in any Class I area in the Town of Jay or of any integral vista for that Class I area, shall demonstrate that each emission unit contributing to the adverse impact on visibility will receive BART as expeditiously as practicable, but no later than five (5) years after the Board identifies BART.

### 6. Hazardous Air Pollutants (HAPs).

If a source is subject to a newly applicable HAP emission limitation, the application shall contain any required information regarding the limitation.

### 7. Ambient Air Quality Impact Analysis.

If required by the Board, the applicant shall submit the results of any ambient air quality impact analyses, including an analysis of the impacts to Air Quality Related Values and impact on visibility if the Board determines that the source may affect ambient increments or Air Quality Related Values in any Class I area in the Town of Jay or integral vista to that Class I area.

### 8. The certification of the responsible official required pursuant to Chapter 3, Section 3-112(I) of this Ordinance.

## **D. Permit Content**

The Board may impose any appropriate and reasonable permit conditions to ensure or maintain compliance with any requirement, emission limitation, ambient air quality standard, or regulation.

The following elements shall be included in the permit:

#### 1. Equipment Description and Emission Limitations.

The permit shall contain terms and conditions with respect to emissions that the Board determines are sufficient to assure compliance with any requirement and shall include the following:

- a. A list of all emission units that are subject to this Chapter;

- b. Emission limitations, including those operational requirements and limitations that assure compliance with any requirement at the time of issuance of the permit; and
  - c. A brief technical evaluation of the controls accepted as BPT.
2. The permit shall specify and reference the origin of and authority for each term or condition pertaining to all Town of Jay requirements, and identify any difference in form as compared to the requirements upon which the term or condition is based.
3. Terms and conditions for reasonably anticipated operating scenarios identified by the applicant in its application:
- i. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and
  - ii. Must ensure that the terms and conditions of each such alternative scenario meet all Applicable requirements, State of Maine requirements or Town of Jay requirements.
4. Terms and conditions, if the application requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
- i. Shall include all terms required to determine compliance; and
  - ii. Must meet all Applicable requirements, State of Maine requirements, and Town of Jay requirements.
5. Compliance Assurance Requirements in accordance with Part 8 of this Chapter, including but not limited to:
- a. Compliance Assurance Plan implementation;
  - b. Monitoring Requirements;
  - c. Recordkeeping Requirements;

The permit shall incorporate record keeping requirements and, require where applicable, the following records of required monitoring information:

- i. The date, place and time of sampling or measurements;
- ii. The date(s) analyses were performed;
- iii. The company or entity that performed the analyses;
- iv. The analytical techniques or methods used;
- v. The results of such analyses; and

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- vi. The operating conditions as existing at the time of sampling or measurement;
- d. Reporting Requirements

The permit shall incorporate reporting requirements as set forth in Chapter 3 and this Chapter.

- e. Other Compliance Requirements

- i. Compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit shall contain a certification by a responsible official.

- ii. A schedule of compliance consistent with this Chapter;

- iii. Progress reports consistent with an applicable schedule of compliance and this Chapter to be submitted at least every six (6) months, or at a more frequent period if specified in the Applicable requirement or by the Board. Such progress reports shall contain the following:

- (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

- (b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

- iv. Requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards, or work practices and such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the CAA.

### 6. Temporary Sources.

Permits for temporary sources shall include conditions that will assure compliance with all requirements applicable to the source at all authorized locations and the requirements of this Chapter, including requirements that the owner or operator notify the Board at least ten (10) days in advance of each change in location, unless the Board allows for a shorter notice.

### 7. HAPs.

If an existing source is subject to a HAP emission limitation or requirement, the permit shall contain the requirements of the HAP emission limitation.

### 8. Ambient Air Quality Impact Analysis.

The permit shall include a section summarizing any required ambient air quality impact analysis.

## 9. Standard Conditions.

The Board may impose any appropriate and reasonable conditions to insure compliance with emission and ambient air quality standards and this Ordinance. However, every Jay Air Emission Permit automatically shall be subject to the following standard conditions and the conditions of Chapter 3:

- a. Employees and authorized representatives of the Town shall be allowed access to the permit holder's premises during business hours, or any time during which any emissions units are in operation, and at such other times as the Board deems necessary for the purpose of performing tests, collecting samples, conducting inspections, or examining and copying records relating to emissions;
- b. The permit holder shall acquire a new or amended air emission permit prior to commencing construction of a modification, unless otherwise provided for in this Chapter;
- c. Approval to construct shall become invalid if the source has not commenced construction within eighteen (18) months after receipt of such approval or if construction is discontinued for a period of eighteen (18) months or more. The Board may extend this time period upon a satisfactory showing that an extension is justified, but may condition such extension upon a review of either the control technology analysis or the ambient air quality standards analysis, or both;
- d. The permit holder shall establish and maintain a continuing program of best management practices for suppression of fugitive emissions during any period of construction, reconstruction, or operation which may result in fugitive emissions, and shall submit a description of the program to the Board upon request;
- e. The permit does not convey any property rights of any sort, or any exclusive privilege;
- f. The permit holder shall maintain and operate all emission units, air pollution control, and monitoring systems required by the air emission permit in a manner consistent with good air pollution control practice for minimizing emissions;
- g. The permit holder shall retain records of all required monitoring data and support information for a period of at least six (6) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
- h. The permit holder shall maintain records of all deviations from permit requirements. Such deviations shall include, but are not limited to malfunctions, failures, downtime, and any other similar change in operation of air pollution control systems or the emissions unit itself that is not consistent with the terms and conditions of the air emission permit. The permit holder shall notify the Board in accordance with Chapter 3 of such occasions and shall report the probable cause, corrective action, and any excess emissions in the units of the applicable emission limitation;
- i. Upon the written order of the Board, the permit holder shall establish and maintain such record, make such reports, install, use, and maintain such monitoring equipment, sample such

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emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Board shall prescribe), and provide other information as the Board may reasonably require to determine the permit holder's compliance status.

- j. The permit holder shall submit quarterly reports of any required monitoring. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official.
- k. The permit holder shall submit Compliance Certification to the Board that complies with the requirements of Part 8.
- l. The permit holder shall comply with all terms and conditions of the air emission permit, applicable ambient air quality standards, emission standards, State laws and regulations, Federal laws and regulations and this Ordinance. The filing of an appeal by the permit holder, the submission of petition to modify or reopen a permit, the notification of planned changes or anticipated noncompliance by the permit holder or the filing of a permit or amendment application shall not stay any condition of the permit.
- m. It is not a defense to an enforcement action that the disruption, cessation, or reduction of permitted operations would have been necessary in order to maintain compliance with the conditions of the air emission permit;
- n. In accordance with air emission compliance test protocols or other methods approved or required by the Board, including but not limited to 40 CFR Part 60, the permit holder shall:
  - i. perform stack testing under operating conditions approved by the Board:
    - (a) within sixty (60) calendar days of receipt of a notification to test from the Board, if visible emissions, equipment operating parameters, staff inspection, air monitoring or other cause indicate to the Board that equipment may be operating out of compliance with emission standards or permit conditions;
    - (b) to demonstrate compliance with the applicable emission standards; or
    - (c) pursuant to any other requirement of this permit to perform stack testing.
  - ii. install or make provisions to install test ports, test platforms, if necessary, and other accommodations necessary to allow emission testing; and
  - iii. submit a written report to the Board within thirty (30) days from the date of test completion.
- o. If the results of a stack test performed under operating conditions approved by the Board indicate emissions in excess of the applicable standards, then:
  - i. within thirty (30) days following receipt of such test results, the permit holder shall re-test the non-complying emission source under the same operating conditions approved by the Board at the time of the initial test or under operating conditions approved by the Board and in accordance with air emission compliance test protocols or other methods approved or required by the Board, including but not limited to 40 CFR Part 60; and

ii. the days of violation shall be presumed to include the date of stack test and each and every day of operation thereafter until compliance is demonstrated under operating conditions approved by the Board, except to the extent that the facility can prove to the satisfaction of the Board that there were intervening days during which no violation occurred or that the violation was not continuing in nature; and

iii. the permit holder may, upon the approval of the Board following the successful demonstration of compliance at alternative or reduced load conditions, operate under such alternative or reduced load conditions on an interim basis prior to a demonstration of compliance under normal and representative process and operating conditions.

p. Notwithstanding any other provision in the Ordinance or in state or federal law or rules, the existence or duration of a violation may be established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence.

#### **E. Criteria for permit approval**

The Board shall grant the permit, if the following criteria are met:

1. The Board has received a complete application for a permit pursuant to this Chapter;
2. The emissions will receive best practical treatment (BPT), including, but not limited to, the requirements specified in this Chapter;
3. The emissions will not violate Town of Jay, State of Maine or federal hazardous air pollutant standards, requirements or limitations or can be controlled so as not to violate the same;
4. The emissions either alone or in conjunction with existing emissions will not violate or can be controlled so as not to violate ambient air quality standards including, but not limited to, ambient increments as adopted by the Department of Environmental Protection pursuant to Title 38 MRSA §584 or this Chapter, or for those sources located within or significantly impacting a federal nonattainment area, the impact to ambient air quality standards is consistent with any plan demonstrating Reasonable Further Progress as defined in Section 171 of the CAA;
5. If the Board determines that the emissions from an existing source are reasonably attributable to the adverse impact on visibility in any Class I area in the Town of Jay, BART will apply to the emissions;
6. The conditions of the permit provide for compliance with all Town of Jay, State of Maine and Applicable requirements;
7. All control technology requirements, including, but not limited to, BPT, BACT, RACT, LAER, and other operating limitations for any emissions unit will be complied with;
8. If the applicant proposes to change the emission limit upon which an air quality impact analysis was based, the applicant may be required to provide a new air quality impact analysis for the new emission limit; and

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### **F. Joint Processing.**

A renewal permit may incorporate a minor modification, minor revision or license transfer when being processed. However, the source must meet the processing requirements for each, as applicable.

*First, Sec. 108, 109 and I 10. Fifth, Sec. 32. Sixth, Sec. 66. Ninth, Sec. 8 and 9. Tenth, Sec. 38. Seventeenth, Sec. 98. Eighteenth, Sec. 32, 33, 34, 35 and 36. Twenty-Second, Sec. 52, 53 and 54.*

## **§13-303 MAJOR MODIFICATION AND NEW MAJOR SOURCES**

### **1. Applicability**

The following procedures shall be used for new Major Sources and Major Modifications.

If the applicant is applying for a Major Modification or a new Major Source permit, the permit must be issued by the Board prior to the start of construction of the modification or the new source.

### **2. Schedule**

An applicant who intends to construct a phased construction project in which the construction phases exceed 18 months or the period of the permit, whichever is less, shall submit an application for a Major Modification for each future phase including a new Best Available Control Technology (BACT) determination as described below.

### **3. Required Application Information**

The applicant shall submit to the Board the information listed below:

- a. The application form as specified in Section 13-301 of this Chapter that contains the required information.
- b. A description of the nature, location (identified on an original U.S. Geological Survey Topographical map), plot plan, building dimensions, and any other information required by the Board;
- c. A schedule for construction of the major modification or the new major source;
- d. Best Available Control Technology (BACT).

The applicant must demonstrate that each emissions unit to be constructed, reconstructed or modified will receive BACT. BACT shall be applied to all regulated pollutants from such emission units, fugitive as well as stack emissions. In selecting one of the alternatives in technology, the applicant should consider application of flue gas treatment, fuel treatment and processes, and techniques which are inherently low polluting and are economically feasible. In cases where technological or economic limitations on the application of measurement techniques would make the imposition of an emission limitation infeasible, a

design, operating, equipment, or work practice standard may be provided by the source. BACT shall include the following:

- i. A description of all alternative systems considered that could achieve a higher degree of emissions control, including all technologically and economically feasible alternatives which have greater control capabilities than the proposed BACT system, and which were used for the same or similar applications. If no better control alternative is technologically and economically feasible for an emissions unit, a statement documenting why a better control alternative is not available, such as a statement pertaining to unique processing equipment or procedures;
  - ii. A top down analysis that includes, if applicable, an explanation of why the more stringent level of control is inappropriate for BACT in terms of energy, economic and environmental impacts. The rationale should be presented in an analysis using descending order of control effectiveness with the impacts of each rejected alternative relative to the proposed BACT system.
- e. Lowest Achievable Emission Rate (LAER).

The applicant with a significant emissions increase or a new major source with significant emissions of a federal nonattainment pollutant located in the geographical boundaries of a nonattainment area or the Ozone Transport Region, or whose emissions will significantly impact a nonattainment area, must demonstrate that LAER is being met for the federal nonattainment pollutant.

- f. Innovative control technology waiver.
- i. Conditions for approval. If the facility is located in an attainment area, the applicant may request the Board to grant a waiver from any or all of the requirements for control technology and to approve a system of innovative control technology. The Board may grant a waiver for the implementation of innovative control technology under the following conditions:
    - (a) The proposed system of innovative control technology will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
    - (b) The applicant agrees to achieve, by a date approved by the Board, a continuous emissions reduction rate greater than or equivalent to the rate that would have been required by BACT. The date of achievement shall be no later than four (4) years from the time of startup or seven (7) years from the issuance of the permit. The date of achievement for HAP sources shall be no later than four (4) years after issuance of a permit.
    - (c) The modification or new source will meet the control technology and Ambient Air Quality Analysis requirements of this Chapter based on the emissions rate that the applicant would be required to meet on the date specified by the Board;
    - (d) The modification or new source will not, prior to the date specified by the Board in subparagraph b, above;

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- (i) Cause or contribute to any violation of any applicable ambient air quality standard;
  - (ii) Impact any area where an applicable ambient increment is known to be violated;
  - (iii) Cause a significant impact in any PM<sub>10</sub>, SO<sub>2</sub>, or NO<sub>2</sub> nonattainment area; or
  - (iv) Cause or contribute to an adverse Air Quality Related Values impact in any Class I area in the Town of Jay; and
- (e) The applicant will meet all of the relevant requirements of this Chapter.
- ii. Conditions for withdrawal. The Board shall withdraw any approval to employ a system of innovative control technology under the following conditions:
- (a) The proposed system of innovative control technology fails to achieve the continuous emissions reduction rate by the specified date;
  - (b) The proposed system of innovative control technology fails before the specified date, so as to contribute to an unreasonable risk to public health, welfare, or safety; or
  - (c) The Board decides at any time that the proposed system of innovative control technology is unlikely to achieve the continuous emissions reduction rate by the specified date, or will cause or contribute to an unreasonable risk to public health, welfare or safety.
- iii. Extension of compliance deadline. If the applicant fails to meet the continuous emissions reduction rate by the specified date, or if the Board's approval is withdrawn in accordance with this section the Board may allow the applicant an additional period, not to exceed three (3) years, to meet the requirement for the application of BACT through use of a demonstrated system of control. No extension will be allowed for regulated HAP sources.
- g. Compliance Assurance Plan.
- Information required under Part 8 of this Chapter; and
- h. Growth Analysis.

The air quality impacts and the nature and extent of emissions from all general, commercial, residential, industrial, and other growth in the area affected by the major modification or the new major source permit, including associated mobile home sources, which has occurred since August 7, 1977 for sulfur dioxide (SO<sub>2</sub>) and PM<sub>10</sub>, and since February 8, 1988 for NO<sub>x</sub>, pursuant to Section 7 of this Chapter. The growth analysis shall be performed only for those pollutants (SO<sub>2</sub>, PM<sub>10</sub>, and NO<sub>x</sub>) by which the modification or new source was determined as major.

i. Title, Right or Interest.

Prior to acceptance of an application for processing for a new source permit, the applicant shall demonstrate to the Board's satisfaction sufficient title, right or interest in all of the property which is proposed for development or use in accordance with Chapter 3 of the Ordinance.

j. HAPs.

The application shall contain HAP information if a source is subject to any Town of Jay, state or federal HAP standard, requirement or limitation.

k. Ambient Air Quality Impact Analysis.

If required by the Board pursuant to this Chapter, the results of any ambient air quality impact analyses, including an analysis of the impacts to Air Quality Related Values and impact on visibility if the Board determines that the source may affect ambient increments or Air Quality Related Values in any Class I area in the Town of Jay or integral vistas to that Class I area.

**4. Permit Content**

The permit shall meet all of the relevant criteria as specified in Section 13-302 of this Chapter for renewal of an air emission permit.

**5. Criteria for permit approval**

The Board shall grant the permit, if the following criteria are met:

- a. The Board has received an acceptable application;
- b. The emissions will receive BACT and/or LAER;
- c. The emissions will not violate Town of Jay, State of Maine or federal hazardous air pollutant standards, requirements or limitations;
- d. The emissions either alone or in conjunction with existing emissions will not violate or can be controlled so as not to violate ambient air quality standards including, but not limited to, ambient increments as adopted by the Maine Department of Environmental Protection pursuant to Title 38 MRSA §584 or this Chapter; or for those sources locating within or significantly impacting a federal nonattainment area, the impact to ambient air quality standards is consistent with any plan demonstrating Reasonable Further Progress as defined in Section 171 of the CAA;
- e. The conditions of the permit provide for compliance with all Town of Jay, State of Maine and Applicable requirements;
- f. The emissions will not have an adverse impact on Air Quality Related Values of any Class I area in the Town of Jay, including any integral vistas for that Class I area;

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g. With respect to any Major Modification or any new Major source, which will emit significant emissions of a nonattainment pollutant, which seeks to relocate in the geographical boundaries of a federal nonattainment area or the Ozone Transport Region, or which will have a significant impact on a federal nonattainment area, the following conditions will be met:

- i. All sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with such person) in this State are in compliance, or on an enforceable schedule for compliance, with all applicable emission limitations under the CAA including, but not limited to, the terms and conditions of any permit, the applicable emission limitations and the ambient air quality standards; and
- ii. The owner or operator has complied with the applicable provisions of this Chapter relating to growth offset regulation;
- iii. The owner or operator has conducted an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

*Seventeenth, Sec. 99. Eighteenth, Sec. 37, 38, 39 and 40.*

### **§13-304 MINOR MODIFICATIONS AND NEW MINOR SOURCES**

#### **1. Applicability**

The following procedures shall be used for new Minor Sources and Minor Modifications.

#### **2. Schedule**

An applicant who intends to construct a phased construction project in which the construction phases exceed 18 months or the period of the permit, whichever is less, shall submit an application for a minor modification for each future phase, including a new Best Available Control Technology (BACT) determination.

#### **3. Required Application Information**

The applicant shall submit to the Board the information listed below:

- a. The application form as specified in Section 13-301 of this Chapter that contains the required information;
- b. A description of the nature, location (identified on an original U.S. Geological Survey Topographical map), plot plan, building dimensions, and any other information required by the Board;
- c. A schedule for construction of the Minor Modification or new Minor Source;

- d. Best Available Control Technology (BACT) as described above in Subsection 13-303(3)(d);
- e. If relevant, the innovative control technology waiver as specified above in Subsection 13-303(3)(f);
- f. All process control and compliance monitoring devices or activities, and any other emission reduction system planned by the owner or operator for a Minor Modification or new Minor Source and such other information required to accurately establish emission estimates, and to document future compliance;
- g. Title, Right or Interest demonstration for new sources in accordance with Chapter 3;
- h. Ambient Air Quality Impact Analysis;

The results of any ambient air quality impact analyses if required by the Board pursuant to this Chapter; and

- i. The certification of the responsible official.

#### **4. Permit Content**

The permit content shall meet all of the relevant criteria as specified in Section 13-302 (Renewal) of this Chapter for renewal of an air emission permit.

#### **5. Criteria for permit approval**

The Board shall grant the permit, if the following criteria are met:

- a. The Board has received an acceptable application for a permit pursuant to this Chapter;
- b. The emissions will receive BACT;
- c. The emissions will not violate Town of Jay, state or federal hazardous air pollutant standards, requirements or limitations or can be controlled so as not to violate the same;
- d. The emissions either alone or in conjunction with existing emissions will not violate or can be controlled so as not to violate ambient air quality standards including, but not limited to, ambient increments as adopted by the Maine Department of Environmental Protection pursuant to Title 38 MRSA §584 or this Chapter; or for those sources locating within or significantly impacting a federal nonattainment area, the impact to ambient air quality standards is consistent with any plan demonstrating Reasonable Further Progress as defined in Section 171 of the CAA;
- e. The conditions of the permit provide for compliance with all Town of Jay, State of Maine and Applicable requirements;

*Seventeenth, Sec. 100. Eighteenth, Sec. 41, 42 and 43.*

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### §13-305 MINOR CHANGE

#### A. Applicability

Minor Change procedures may be used for:

1. the correction of typographical errors;
2. the identification of an administrative change;
3. a change to more frequent monitoring, reporting, record keeping or testing requirements;
4. a modification at a facility with a permitted emissions increase under four (4) tpy for any one regulated pollutant and under eight (8) tpy of total regulated pollutants, and is determined not to be a Major or Minor Modification and is subject to permitting as defined in this Chapter; or
5. any other changes determined by the Board to be a Minor Change.

#### B. Schedule

The applicant may request a Minor Change at any time during the term of a permit.

#### C. Required Application Information

For a Minor Change, the application submission shall consist of a letter requesting the Minor Change with the reason for the request, and any relevant information including, but not limited to, a description of the revision and any emission calculations. The signatory sheet signed by a responsible official shall be included in the submittal.

#### D. Permit Content

A Minor Change shall contain the following:

1. A description of the change and the basis for the request, and
2. Terms and conditions that will assure compliance with any requirements applicable to the change.

#### E. Criteria for permit approval

The Minor Change shall be granted if the Board determines that the change meets the applicability criteria specified above in subsection A and will not violate any requirements applicable to the source. Any permit amendment approved by the Board shall be appended to or incorporated in the original permit.

*Seventeenth, Sec. 100.*

### §13-306 PERMIT TRANSFER

The following outlines the procedures for issuing a Permit Transfer:

**A. Applicability**

The transferee shall abide by all of the conditions of the permit and is jointly or severally liable with the original permit holder for any violation of the terms and conditions thereof pending determination on the application for approval of a transfer.

**B. Schedule**

An application for a Permit Transfer shall be submitted to the Board no later than two weeks after any transfer of property subject to a permit.

**C. Required Application Information**

1. Identifying new information, including company name and address (or plant name and address if different from the company name), owner's name, agent and telephone number, responsible official's name and address, telephone number and names of plant site manager or designated contact person;
2. A letter including the following information:
  - a. The full name and address of the new owner;
  - b. The date of the official sale;
  - c. A copy of the purchase agreement or deed showing transfer of ownership, or demonstration of title, right, or interest;
  - d. A statement that there will be no increase in air emissions beyond that provided for in the existing permit, either in quantity or type, without prior written permission from the Board; and
  - e. A demonstration of technical and financial capacity of the new owner and intent to:
    - i. Comply with all conditions of the permit, and
    - ii. to satisfy all regulatory criteria and to comply with the Ordinance.
3. The signatory sheet from a responsible official.

**D. Permit Content**

The Permit Transfer shall contain the following:

1. Full name and address of new owner and the date of transfer of ownership;
2. A statement that there will be no increase in air emissions beyond that provided for in the existing permit, either in quantity or type, without prior written permission from the Board; and

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3. A statement describing the technical and financial capacity of the new owner.

### **E. Criteria for permit approval**

Approval for a Permit Transfer shall be based on the acceptability of the information required in the application submittal.

*Seventeenth, Sec. 100.*

## **§13-307 AMBIENT AIR QUALITY ANALYSIS**

### **A. General**

It shall be the burden of any applicant to provide an affirmative demonstration that its emissions, in conjunction with all other sources, will not violate state or Town of Jay ambient air quality standards, except that sources in nonattainment areas or which significantly impact a nonattainment area shall be required to demonstrate that the source's emissions are consistent with Reasonable Further Progress provisions of the State Implementation Plan. An applicant may use ambient air monitoring, modeling, or other assessment techniques as approved by the Board. The analyses shall include relevant emissions units at the source, meteorological and topographical data necessary to estimate such impacts, and shall consider the impact of fugitive emissions, to the extent quantifiable, secondary emissions, and emissions from other existing sources including increases in mobile and area source emissions impacting the same area.

The level of analysis shall depend upon the size of the source, the regulated air pollutants emitted, existing air quality, proximity to Class I or nonattainment areas, or areas where increment has been substantially consumed. The air quality impact analysis, in general, will not be required of the applicant for those regulated pollutants which are not listed under "significant emissions increase" of this Chapter.

#### 1. Monitoring

Monitoring done by the owner or operator shall conform to state and federal requirements and guidance.

#### 2. Modeling.

a. All estimates of ambient concentrations required by an ambient or increment impact analysis shall be based on the relevant air quality models, data bases, and other requirements specified in state and federal guidance, to the extent quantifiable, shall be considered.

b. All preprocessed meteorological data used in refined modeling analyses shall be submitted to the Board in a computer format acceptable to the Board.

### **B. Renewal of a Minor or Major source permit**

1. A previously submitted impact analysis shall be acceptable unless:

a. It has been found to be deficient with respect to requirements set forth in this Chapter;

- b. The impact analysis fails to reflect available information with respect to ambient air quality levels in the area, which, based upon the Board's expertise, may reasonably be expected to be significantly impacted by the source;
  - c. The source emits a regulated pollutant for which an ambient air quality standard has been adopted and whose impact was not addressed in the original impact analysis;
  - d. The renewal of the source is in conjunction with a minor or major modification which requires a modeling analysis pursuant to other sections of this Chapter; or
  - e. There are changes in stack or building configurations or other factors which are determined to significantly alter the dispersion characteristics of the source.
2. Continuation of an ambient air monitoring or meteorological monitoring program shall be made on a case-by-case basis at the time of the renewal. It shall be the burden of the applicant to demonstrate the adequacy of existing data, its relationship to past, present, and future facility operating conditions, and the adequacy of other means to document continuing compliance.
3. An existing source shall be exempt from an impact analysis with respect to a regulated pollutant whose allowed emissions, after the application of control technology requirements do not exceed the following, unless the source is located in or near a Class I area or an area where the available air quality is limited, or other extenuating circumstances exist:
- a. 50 tons per year (tpy) for SO<sub>2</sub>;
  - b. 250 tpy for CO;
  - c. 25 tpy for PM<sub>10</sub> or TSP;
  - d. 100 tpy for NO<sub>x</sub> (measured as NO<sub>2</sub>);
  - e. 0.6 tpy for Lead (Pb); or
  - f. 0.2 tpy of total Chromium.

### **C. New Minor sources and Minor Modifications to Minor or Major Sources**

This section shall apply to any new Minor source or Minor Modification of a Minor or Major source.

- 1. A new Minor source or an existing Minor source that previously was not required to submit an air quality impact analysis for an air emissions permit, but is undergoing a Minor Modification shall submit an air quality impact analysis for those regulated pollutants that the Minor source emits or has the potential to emit at levels equal to or greater than the limits in Section 13-307(B)(3) of this Chapter after the application of control technology requirements specified in Section 13-303 of this Chapter.
  - a. Ambient air quality standards analysis

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An ambient air quality standards analysis shall be submitted which includes dispersion modeling for each pollutant for which there is a Town of Jay or state ambient standard (except nonmethane hydrocarbons). The analysis also shall include ambient air monitoring, meteorological and topographic data necessary to estimate such impact, as well as an analysis of the impact of all other sources in the area with actual emissions of 100 tpy or more of the same pollutant. At a minimum, this analysis shall include all such sources that emit more than 100 tpy of a given regulated pollutant located within the lesser of 10 km or the area may reasonably be expected to be significantly impacted by the proposed new Minor source or Minor Modification of a Minor source.

b. Ambient increment analysis

An increment analysis shall be submitted to each pollutant for which there is an ambient increment standard. The analysis shall include meteorological and topographical data necessary to estimate such impacts, as well as an analysis of the air quality impacts and nature and extent of any or all general, commercial, residential, industrial and other growth, including increases in mobile source and area source emissions which has occurred since the baseline date, and therefore have consumed increment in the area where the new Minor source or Minor Modification of a Minor source will significantly impact. The analysis shall be conducted in accordance with the modeling provisions of this subsection.

2. The level of air quality analyses for any new Minor source or any Minor or Major source undergoing a Minor Modification which emits or has the potential to emit regulated pollutants at a rate less than the emission levels in Section 13-307(B)(3) of this Chapter, and the level of air quality monitoring for any new minor source or any minor modification to a minor or major source shall be determined on a case-by-case basis considering:

- a. Air quality data available in or representative of the area;
- b. Similarity with other permitted sources in terms of size, emissions, and local topography;
- c. Location, including proximity to Class I areas (increment consuming sources located within 25 kilometers of a Class I area may be required to conduct a Class I increment analysis), integral vistas, nonattainment areas or areas where increment has been substantially consumed; and
- d. The results of previous air quality analyses.

An analysis may be required, even in cases resulting in no increases in emissions, if a stack height is less than Good Engineering Practice or if there are changes in stack or building configurations or other factors which are determined to alter the dispersion characteristics of the Minor or Major source.

### **D. New Major sources and Major Modifications**

This section shall apply to any new major source or any major modification which emits or has the potential to emit a significant emissions increase of any regulated pollutant.

1. Pre-construction monitoring
  - a. For those pollutants for which there is an ambient air quality standard (except nonmethane Hydrocarbons), the analysis shall consist of continuous air quality monitoring

data gathered over a period of one year and shall represent the year preceding the application. If the Board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, the application may be deemed acceptable for processing based on the data gathered over the shorter period. The period shall not be less than 4 months. The applicant must demonstrate that such shorter period, or period other than the preceding year, is representative of ambient concentrations under the seasonal conditions expected to record the highest concentrations.

b. For those pollutants for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the Board determines is necessary and feasible in light of methods available to monitor such pollutants.

c. A new Major source or Major Modification shall be exempt from the preconstruction monitoring requirements of this subsection if the emissions increase of a pollutant would cause, in every area, air quality impacts less than the following amounts:

- i. Carbon Monoxide                      575  $\mu\text{g}/\text{m}^3$ , 8-hr average;
- ii. Nitrogen dioxide                      14  $\mu\text{g}/\text{m}^3$ , annual average;
- iii. Sulfur dioxide                        13  $\mu\text{g}/\text{m}^3$ , 24-hour average;
- iv. Ozone--No de minimis air quality level is provided for ozone. Any Major sources having a net emissions increase of 100 tpy or more of Volatile Organic Compounds (excluding negligibly photochemically reactive VOC) shall conduct ambient air monitoring except that when such Major source satisfies the condition of 40 CFR Part 51, Appendix S, section IV, post-approval monitoring data for ozone may be substituted for preconstruction data;
- v. Lead                                        0.1  $\mu\text{g}/\text{m}^3$ , 24-hr. average;
- vi. Mercury                                 0.25  $\mu\text{g}/\text{m}^3$ , 24-hr. average;
- vii. Beryllium                              0.0005  $\mu\text{g}/\text{m}^3$ , 24-hr. average;
- viii. Fluorides                             0.25  $\mu\text{g}/\text{m}^3$ , 24-hr. average;
- ix. Vinyl chloride                        15  $\mu\text{g}/\text{m}^3$ , 24-hr. average;
- x. Total reduced sulfur                  10  $\mu\text{g}/\text{m}^3$ , 1-hr. average;
- xi. Hydrogen sulfide                     0.4  $\mu\text{g}/\text{m}^3$ , 1-hr. average;
- xii. Reduced sulfur compounds       10  $\mu\text{g}/\text{m}^3$ , 1-hr.;
- xiii. Chromium                            0.02  $\mu\text{g}/\text{m}^3$ , 24-hr. average; and
- xiv.  $\text{PM}_{10}$                                  10  $\mu\text{g}/\text{m}^3$ , 24-hr. average.

d. Class I areas

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In addition to the impact analysis required in Sections 13-307(D)(2), (3), and (4) of this Chapter, the proposed New Major source or Major Modification subject to this subsection may be required to conduct monitoring to establish the condition of and impact on air quality related values (including visibility) in an affected Class I area(s), in the Town of Jay or integral vistas, both prior to completing an application for an emission permit and during construction and operation of such new Major source or Major Modification.

### 2. Ambient air quality standards analysis

An ambient air quality standards analysis shall be submitted which includes dispersion modeling for each pollutant for which there is a Town of Jay or State ambient standard (except nonmethane hydrocarbons). The analysis also shall include ambient air monitoring, meteorological and topographic data necessary to estimate such impact, as well as an analysis of the impact of all other sources in the area with actual emissions of 100 tpy or more of the same pollutant. At a minimum, this analysis shall include all such sources that emit more than 100 tpy of a given regulated pollutant located within the lesser of 10 km or the area, which, based upon the Board's expertise, may reasonably be expected to be significantly impacted by the proposed New Major source or Major Modification.

### 3. Ambient increment analysis

An increment analysis shall be submitted for each pollutant for which there is a Town of Jay or state ambient increment standard adopted. The analysis shall include meteorological and topographical data necessary to estimate such impacts, as well as an analysis of the air quality impacts and nature and extent of any or all general, commercial, residential, industrial and other growth, including increase in mobile source and area source emissions which has occurred since the baseline date, and therefore have consumed increment in the area where the new Major source or Major Modification will significantly impact. This analysis shall be conducted in accordance with the modeling provisions of this subsection.

### 4. Additional impact analysis

The proposed new major source or major modification shall provide an additional impact analysis of:

- a. The impairment to visibility, soils and vegetation that would occur as a result of the new major source or major modification and general, commercial, residential, industrial and other growth associated with the new Major source or Major Modification, except that an analysis of the impact on vegetation having no significant commercial or recreational value is not required;
- b. The air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the facility or modification; and
- c. The impact, including visibility impairment, on any Class I area or integral vista in the Town of Jay.

### 5. Post-construction monitoring

The owner or operator, shall after construction of the new major source or major modification, conduct such ambient monitoring or meteorological monitoring as the Board determines is necessary to determine the effect emissions from the new major source or major modification may have, or are having, on air quality in any area.

A major source or major modification shall be exempt from the requirements of this subsection if its emissions do not significantly impact a Class I area associated with the Town of Jay or an area where the increment is known to be violated or substantially consumed, and

- a. The allowable emissions increase will be temporary, not to exceed 2 years; and
- b. Any permitted portable source shall not increase, nor exceed, the allowable emissions and reasonable notice of not less than 10 working days prior to the relocation shall be given to the Board concerning its proposed location and probably duration of operation at the new location.

#### **E. Modeling protocol**

Any air quality dispersion modeling or data collection program shall be developed consistent with the following requirements:

**1. Air quality dispersion modeling protocol.** If impacts from SO<sub>2</sub>, NO<sub>2</sub>, CO and PM<sub>10</sub> are above significance or if there are other regulated pollutants to be modeled, then the applicant must provide in writing to the Board, a description of the following factors (if different from previously submitted data) that the applicant proposes to use in the air quality dispersion modeling.

- a. Operating scenarios and emission units (including other nearby sources, if necessary);
- b. Regulated air pollutants;
- c. Model(s) and methodologies;
- d. Origin of meteorological data;
- e. Period of meteorological record;
- f. Receptor grid (listing of coordinates and elevations plus topographic maps covering the receptor grid area);
- g. Any special (e.g., fenceline) receptors;
- h. Identity of emissions which are included in baseline emissions;
- i. Building dimension and Good Engineering Practice (GEP) analysis techniques; and
- j. Background concentration data.

The Board shall notify the applicant in writing that such information is complete and acceptable for modeling or notify the applicant in writing of the reason(s) why the information is not complete. When all submitted information is considered complete and acceptable for modeling, the applicant shall perform air quality dispersion modeling and submit for review the air quality dispersion modeling analysis as part of the final application submittal.

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*Seventeenth, Sec. 100. Eighteenth, Sec. 44, 45, 46 and 47. Twenty-Second, Sec. 55.*

### **PART 4**

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## **AMBIENT AIR QUALITY STANDARDS, INCREMENTS AND NONATTAINMENT**

### Section

- §13-400 Introduction
- §13-401 Particulate Matter
- §13-402 Sulfur Dioxide
- §13-403 Carbon Monoxide
- §13-404 Photochemical Oxidant
- §13-405 Hydrocarbon
- §13-406 Nitrogen Dioxide
- §13-407 Lead
- §13-408 Chromium
- §13-408-A Perchloroethylene
- §13-408-B Toluene
- §13-409 Increments
- §13-410 Increments Policy
- §13-411 Nonattainment

*Seventeenth, Sec. 102. Eighteenth, Sec. 48.*

### **§13-400 INTRODUCTION**

The ambient air quality standards set forth in this Part, which are expressed in terms of 25 centigrade and 760 millimeters of mercury pressure, shall apply throughout the Town of Jay.

An applicant shall demonstrate that the ambient air quality standards will be met at all locations beyond the production area of the source. The production area exclusion shall not be applicable to a source whose purpose is to serve the general public or to any part of any applicant's property in which the general public has a right of access. The production area exclusion shall not be applicable to an expansion of a sources production area after December 31, 1970 unless the applicant demonstrates that

the expansion is due to business or commercial factors and is not sought to increase dispersion of emissions.

*Fifth, Sec. 33. Eighteenth, Sec. 49.*

### **§13-401 PARTICULATE MATTER**

A. The maximum 24-hour particulate matter concentration shall not exceed 150 micrograms per cubic meter, as measured in the ambient air as PM<sub>10</sub>, based on methods contained in Appendix M of 40 CFR Part 50, as amended, and as designated in accordance with 40 CFR Part 53 or a similar generally accepted measurement method approved by the Board on a case by case basis. The standards are attained when the 99<sup>th</sup> percentile 24-hour concentration is less than or equal to 150 micrograms per cubic meter as determined in accordance with Appendix N of 40 CFR Part 50, as amended, or a similar generally accepted measurement method approved by the Board.

B. The annual arithmetic mean for particulate matter shall not exceed 40 micrograms per cubic meter, as measured in the ambient air as PM<sub>10</sub> based on methods contained in Appendix M of 40 CFR Part 50, as amended, or a similar generally accepted measurement method approved by the Board. The standards are attained when the expected annual arithmetic mean concentration is less than or equal to 40 micrograms per cubic meter, as determined in accordance with Appendix N of 40 CFR Part 50, as amended, or a similar generally accepted measurement approved by the Board.

*First, Sec. 111 and 128. Fifth, Sec. 34. Sixth, Sec. 67. Thirteenth, Sec. 61. Seventeenth, Sec. 103. Twentieth, Sec. 30.*

### **§13-402 SULFUR DIOXIDE**

A. Sulfur dioxide concentration for any 3-hour period at any location shall not exceed 1150 micrograms per cubic meter, except once per year.

B. Sulfur dioxide concentration for any 24-hour period at any location shall not exceed 230 micrograms per cubic meter, except once per year.

C. The annual arithmetic mean of the 24-hour average sulfur dioxide concentrations at any location shall not exceed 57 micrograms per cubic meter.

### **§13-403 CARBON MONOXIDE**

A. Carbon monoxide concentration for any 8-hour period at any location shall not exceed 10 milligrams per cubic meter, except once per year.

B. Carbon monoxide concentration for any 1-hour period at any location shall not exceed 40 milligrams per cubic meter, except once per year.

### **§13-404 PHOTOCHEMICAL OXIDANT**

Photochemical oxidant concentration (measured as ozone) for any 8-hour period at any location shall not exceed 0.08 parts per million. The ozone 8-hour standards are attained when the average of the annual

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fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 parts per million using methods set forth in Appendix I of 40 CFR Part 50, as amended, or other similar generally accepted methods approved by the Board.

*Seventeenth, Sec. 104. Eighteenth, Sec. 50. Twentieth, Sec. 31.*

### **§13-405 HYDROCARBON**

Hydrocarbon concentration for any 3-hour period at any location shall not exceed 160 micrograms per cubic meter, except once per year.

### **§13-406 NITROGEN DIOXIDE**

The annual arithmetic mean of the 24-hour average nitrogen dioxide concentration at any location shall not exceed 100 micrograms per cubic meter.

### **§13-407 LEAD**

The maximum 24-hour lead concentration at any location shall be 1.5 micrograms per cubic meter, which standard may be exceeded once per year.

### **§13-408 CHROMIUM**

A. Until the time that an analytical procedure for measuring hexavalent chromium in the ambient air is approved:

1. The maximum 24-hour total chromium concentration at any location shall not exceed 0.3 micrograms per cubic meter; and
2. The annual geometric mean of the total chromium concentrations at any location shall not exceed 0.05 micrograms per cubic meter.

B. Subsequent to the establishment of an acceptable analytical procedure for measuring hexavalent chromium in the ambient air:

The maximum 24-hour ambient air quality impact of hexavalent chromium from a potential source of hexavalent chromium air emissions, as defined in Maine law, shall not exceed the minimum detection limit of that procedure or 1.0 nanogram per cubic meter, whichever is greater.

### **§13-408-A PERCHLOROETHYLENE**

The maximum annual concentration of perchloroethylene at any location may not exceed 0.01 micrograms per cubic meter.

*Seventeenth, Sec. 105.*

**§13-408-B TOLUENE**

- A. The maximum concentration of toluene for any 15 minute period at any location may not exceed 15,000 micrograms per cubic meter.
- B. The maximum concentration of toluene for any 24-hour period at any location may not exceed 260 micrograms per cubic meter.
- C. The maximum annual concentration of toluene at any location may not exceed 180 micrograms per cubic meter.

*Seventeenth, Sec. 106.*

**§13-409 INCREMENTS**

In addition to the ambient air quality standards the Town of Jay shall be subject to a maximum allowable increase in concentrations of particulate matter and sulfur dioxide over the baseline concentration of that pollutant, which increase shall not be exceeded more than once annually for any period other than an annual period. The maximum allowable increase shall consist of:

**A. PM10.** In regards to particulate matter:

- 1. An increase in the annual mean at any location not to exceed 17 micrograms per cubic meter; and
- 2. An increase in concentration for any 24-hour period at any location not to exceed 30 micrograms per cubic meter; and

**B. Sulfur dioxide.** In regards to sulfur dioxide:

- 1. An increase in the annual arithmetic mean at any location not to exceed 20 micrograms per cubic meter; and
- 2. An increase in concentration for any 24-hour period at any location not to exceed 91 micrograms per cubic meter; and
- 3. An increase in concentration for any 3-hour period at any location not to exceed 512 micrograms per cubic meter.

**B-1. Nitrogen oxides.** In regards to nitrogen oxides:

An increase in the annual arithmetic mean at any location not to exceed 25 micrograms per cubic meter to be expressed as nitrogen dioxide.

**C. Exclusions from the Increment.**

- 1. Concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 2 (a) and (b) of the Federal

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Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such order;

2. Concentrations of total suspended particulate attributable to the increase in emissions from construction or other temporary emission-related activities; and
3. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration.

*First, Sec. 112. Eighth, Sec. 27. Thirteenth, Sec. 62. Seventeenth, Sec. 107.*

### **§13-410 INCREMENTS POLICY**

It shall be the policy of the Town of Jay that no more than 75% of any increment shall be allocated to any source. The Board may grant a variance to this 75% limits for good cause shown based on a consideration of the duration and degree of the proposed variance to the 75% limit, whether the applicant has explored alternatives to reduce emissions, and after a demonstration that the source will provide a significant public environmental benefit.

*Twentieth, Sec. 32.*

### **§13-411 OZONE CLASSIFICATION**

The Town of Jay is currently located within the Ozone Transport Region. The Town of Jay's ozone attainment status shall be determined by the United States Environmental Protection Agency's ozone attainment classification for regions within the State of Maine. Emissions of Volatile Organic Compounds and Nitrogen Oxide are the nonattainment pollutants for ozone.

*First, Sec. 113. Seventeenth, Sec. 108. Twentieth, Sec. 33.*

## **PART 5**

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### **EMISSION STANDARDS**

#### Section

- §13-501 Fuel-burning Equipment Particulate Emission Standard
- §13-502 General Process Source Particulate Emissions
- §13-503 Total Reduced Sulfur Emissions
- §13-504 Visible Emissions
- §13-505 Chromium Particulate Emission Standard

- §13-506 Chlorine and Chlorine Dioxide Emission Standard
- §13-507 Paper Coating Line Emissions
- §13-508 New Source Performance Standards
- §13-509 Prevention Of Significant Deterioration (PSD) And Nonattainment New Source Review (NSR)

*Seventeenth, Sec. 109. Twentieth, Sec. 34. Twenty-Second, Sec. 56.*

The emission standards set forth in this part shall apply throughout the Town of Jay.

## **§13-501 FUEL-BURNING EQUIPMENT PARTICULATE EMISSION STANDARD**

### **A. Scope.**

This chapter shall apply to all fuel burning or solid waste fuel burning equipment located in the Town of Jay and having a rated capacity of 3 million B.T.U. per hour or greater.

### **B. Emission Standards.**

1. Any source which applied for a Maine air emission license prior to December 22,1982 shall limit particulate emissions as follows:

**a. Oil-Gas-Petroleum Burning.** Any source burning distillate or residual fuel oil, gas, or other petroleum product shall not exceed 0.20 lbs. particulate per million B.T.U. Any source which cannot achieve the 0.20 lbs. particulate per million B.T.U. limit will be allowed to operate at that higher emission rate, but not to exceed 0.30 lbs. particulate matter per million B.T.U., if it installs automatic fuel viscosity controls integrated into the fuel oil controls and combustion efficiency instrumentation or equivalent alternative procedure approved by the Board. The source will be allowed a period of one year from the date of demonstration of noncompliance to install the controls.

#### **b. Coal Burning.**

(1) Any coal burning source with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any coal burning source including one presently burning oil but designed to burn coal with a heat input capacity of 50 million BTU/Hr. or greater shall not exceed 0.08 lbs. particulate per million B.T.U.

#### **c. Wood Burning**

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(1) Any source designed to burn wood, bark, chips, sawdust, pulp mill sludge, or similar forest product (including those with supplementary oil firing capabilities) with a heat input capacity of less than 150 million B.T.U./Hr. shall not exceed an emission rate defined according to the following equation (even during periods of burning only oil):

$$\log y = 0.034 - 0.256 \log x$$

where Y = allowable emission rate expressed in lbs. particulate per million B.T.U.

x = equipment capacity expressed in millions of B.T.U.s /hour.

(2) Any source designed to burn wood, bark, chips, sawdust, pulp mill sludge, or similar forest product (including those with supplementary oil firing capabilities) with a heat input capacity of 150 million B.T.U./Hr. or greater shall not exceed 0.30 lbs. particulate matter per million B.T.U. (even during periods of burning only oil).

**d. Solid Waste.** Any source burning refuse, garbage, trash, or any combination of municipal or industrial solid waste shall not exceed 0.08 grains per standard cubic foot of dry flue gas for a 2-hour sampling period, corrected to 12% carbon dioxide without the contribution of carbon dioxide from the auxiliary fuel.

2. Any fuel burning equipment, the owner of which applied for a Maine air emission license after December 22, 1982, shall limit particulate emissions as follows:

**a. Oil-Gas-Petroleum Burning.**

(1) Any source burning distillate or residual fuel oil, gas, or other petroleum product with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.12 lbs. particulate per million B.T.U.

(2) Any source burning distillate or residual fuel oil, gas, or other petroleum product with a heat input capacity of 50 million B.T.U./Hr. or greater but less than 250 million B.T.U./Hr. shall not exceed 0.08 lbs. particulate per million B.T.U.

(3) Any source burning distillate or residual fuel oil, gas, or other petroleum product with a heat input capacity of 250 million B.T.U. /Hr. or greater shall not exceed 0.06 lbs. particulate per million B.T.U.

**b. Solid Waste Burning.**

(1) Any source burning refuse, garbage, trash, or any combination of municipal or industrial solid waste with a heat input capacity of less than 50 million B.T.U./ Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any source burning refuse, garbage, trash or any combination of municipal or industrial solid waste with a heat input capacity of 50 million B.T.U./Hr. or greater but less than 250 million B.T.U./Hr. shall not exceed 0.20 lbs. particulate per million B.T.U.

(3) Any source burning refuse, garbage, trash, or any combination of municipal or industrial solid waste with a heat input capacity of 250 million B.T.U./Hr. or greater shall not exceed 0.10 lbs. particulate per million B.T.U.

**c. Coal Burning.**

(1) Any coal burning source with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any coal burning source with a heat input capacity equal to or greater than 50 million B.T.U./Hr. but less than 250 million B.T.U./Hr. shall not exceed 0.08 lbs. particulate per million B.T.U.

(3) Any coal burning source with a heat input capacity of 250 million B.T.U./Hr. or greater shall not exceed 0.05 lbs. particulate per million B.T.U.

**d. Wood-Coal-Biomass.**

(1) Any biomass boiler, so called, designed to burn wood, bark, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any biomass boiler, so called, designed to burn wood, bark, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of 50 million B.T.U./ Hr. or greater but less than 250 million B.T.U./Hr. shall not exceed 0.08 lbs. particulate per million B.T.U. when burning the primary fuel or fuel combinations within the range of design rate proportions. When burning a fuel other than the primary design fuel or a combination of fuels outside the range of design rate proportions the particulate emissions shall not exceed 0.10 lbs. particulate per million B.T.U. provided the particulate matter control equipment is being operated to maximize particulate removal.

(3) Any biomass boiler, so called, designed to burn wood, bark, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of 250 million BTU /Hr. or greater shall not exceed 0.06 lbs. particulate per million BTU when burning the primary fuel, or fuel combinations within the range of design rate proportions. When burning a fuel other than the primary design fuel, or a combination of fuels outside the range of design rate proportions, the particulate emissions shall not exceed 0.10 lbs. particulate per million BTU, provided the control equipment is being operated and maintained to maximize particulate removal.

(4) Any biomass boiler, so called, designed to burn wood, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of 50 million BTU/Hr. or greater, which uses a venturi scrubber providing 75% or greater Sulfur Dioxide removal, shall be exempt from the provisions of Section 13-501(B)(2)(d)(2) and Section 13-501(B)(2)(d)(3) and shall not exceed 0.10 lbs. particulate per million B.T.U.

**C. Exemptions.**

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Any source, the owner of which applied for a Maine air emission license after December 22, 1982, but which equipment has been previously owned and operated, shall be exempt from the provisions of Section 13-501(B)(2) and will be subject to case-by-case emission limitations not to exceed the respective emission limitations of Section 13-501(B)(1).

*First, Sec. 114, 115, 116, 117, 118 and 119. Sixth, Sec. 68 and 69. Seventeenth, Sec. 110, 111, 112 and 113.*

### §13-502 GENERAL PROCESS SOURCE PARTICULATE EMISSIONS

**A. Kraft Pulping Processes.** Any person operating any kraft pulping process shall limit the emission of particulate air contaminants from such emission source as follows:

Four pounds of particulate emissions per air dried ton of kraft pulp from the recovery boiler; one pound of particulate air contaminants per air dried ton of kraft pulp from the lime kiln; 0.5 pound of particulate air contaminants per air dried ton of kraft pulp from the smelt tank during any continuous 2-hour period.

**B. Other processes.** Any person operating any general process sources, except kraft processes, shall limit the emission of particulate air contaminants from such source according to the following table. All similar units, processes operated by the same person at the same general location, shall be combined in computing the process weight rate for use in Table 1.

TABLE I

Process Weight Rate	Emission Rate (lbs./hr.)
50	0.36
100	0.55
500	1.53
1,000	2.25
5,000	6.34
10,000	9.73
20,000	14.99
60,000	29.60
80,000	31.19
120,000	33.28
160,000	34.85
200,000	36.11
400,000	40.35
1,000,000	46.72

Interpolation of Table I for process weight rates up to 60,000 lbs./hr. shall be computed by use of the following equation:

$$E=3.59P^{0.62}$$

for P less than or equal to 30 tons/hr.

and interpolation and extrapolation of Table I for rates in excess of 60,000 lbs./hr. shall be computed by use of the equation:

$$E=17.31P^{0.16}$$

for P greater than 30 tons /hr.

Where E = emissions in pounds per hour and P = process weight rate in tons per hour.

*Seventeenth, Sec. 114.*

### §13-503 TOTAL REDUCED SULFUR EMISSIONS FROM EXISTING KRAFT PULP MILLS

**A. Scope.** These emission limits apply to the following existing processes in kraft pulp mills: digester system, multiple-effect evaporator system, recovery furnace, smelt dissolving tank, lime kiln, brown stock washer system, and condensate stripper system. Kraft pulp mills may also be subject to the United States Environmental Protection Agency's New Source Performance Standard for Kraft Pulp Mills, 40 CFR Part 60, Subpart BB.

**B. Standards.** No owner or operator subject to this regulation shall cause to be discharged into the atmosphere:

1. From any digester system, multiple-effect evaporator system or condensate stripper system, or after June 1, 1996, from any brown stock washer system, any gases which contain TRS in excess of 5 ppm by volume on a dry basis on a 12 hour block average unless the following conditions are met:
  - a. The gases are combusted in a lime kiln subject to the provisions of paragraph (6) below and may also be subject to the requirements of 40 CFR part 60.283(a)(5); or
  - b. The gases are combusted in a recovery furnace subject to the provisions of paragraphs (2), (3) or (4) below and may also be subject to the requirements of 40 CFR Parts 60.283(a)(2) or (a)(3); or
  - c. The gases are combusted with other waste gases in an incinerator or other device, and are subjected to a minimum temperature of 1200 degrees F for at least 0.5 seconds; or
  - d. The gases from the digester system, multiple-effect evaporator system, condensate stripper system, or after June 1, 1996, brown stock washer system, are controlled by a means other than combustion. In this case, the non-combustion system shall not discharge any gases to the atmosphere which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to the actual oxygen content of the untreated gas system on a 12 hour block average.
  - e. An owner or operator of a brown stock washer system may petition the Board for an exemption to the brown stock washer TRS control requirements in instances where the brown stock washer system units have a TRS mass flow rate of less than or equal to 0.5 lb/hr.

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The affected systems of this subsection, with the exception of the brown stock washer system, shall have a primary control strategy and a backup strategy that meets the requirements of this subsection. The backup system shall be employed as expeditiously as practical but not later than 40 minutes after the primary system's malfunction or shutdown.

The control of any brown stock washer system subject to this regulation shall require 95% uptime based on quarterly brown stock washer system operation time.

2. From any new design straight kraft recovery furnace equipped with either a dry-bottom ESP or a wet-bottom ESP employing water, any gases which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to 8 percent oxygen.
3. From any new design straight kraft recovery furnace with a wet-bottom ESP employing black liquor, any gases which contain TRS in excess of 15 ppm by volume on a dry basis, corrected to 8 percent oxygen.
4. From any old design straight kraft recovery furnace, any gases which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 8 percent oxygen.
5. From any smelt dissolving tank, any gases which contain TRS in excess of 0.016g/kg black liquor solids as H<sub>2</sub>S (0.033 lb/ton black liquor solids as H<sub>2</sub>S).
6. From any lime kiln, any gases which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 10 percent oxygen.
7. Compliance with the TSR emission standards in this section are based on 12 hour block averages meaning the discrete 12 hour periods from noon to midnight and midnight to noon.
8. All concentration of TRS required to be measured from lime kilns, incinerators, or other combustion devices shall be corrected to ten (10)% oxygen by volume and those concentrations from recovery furnaces shall be corrected to eight (8)% oxygen by volume. These corrections shall be made in the following manner:

$$\text{corr} = \text{meas} \times (21 - X) / (21 - Y)$$

Where: corr = The concentration corrected for oxygen.

meas = The concentration uncorrected for oxygen.

X = The volumetric oxygen concentration in percentage to be corrected to eight (8)% for recovery furnaces and ten (10)% for lime kilns, incinerators, or other combustion devices.

Y = The measured twelve (12)-hour block average volumetric oxygen concentration.

### C. Effective date.

Compliance with the provisions of this regulation shall be met, unless otherwise specified in the regulation, by January 8, 1991.

#### **D. Reporting.**

1. Any owner or operator subject to this Section must report to the Board, according to Chapter 3, the direct venting to the atmosphere for longer than fifteen minutes of any TRS laden gas stream subject to this Section.
2. In addition to the other reporting requirements set forth in Chapter 3 and Chapter 13, any owner or operator subject to this Section must submit quarterly reports to the Board documenting all excess emissions including recorded concentrations and continuous emissions monitoring downtimes based on the standards set forth in subsection B of this Section.

For emissions from any digester system, multiple-effect evaporator system, condensate stripper system, or brownstock washer system, periods of excess emissions are:

- (1) Except where the requirements of subsection B (1) (a), (b) or (c) of this Section are met, all twelve (12)-hour block average TRS concentrations above five (5) ppm by volume dry basis;
  - (2) Where the requirements of subsection B(1) (c) of this Section apply, all periods in excess of five (5) minutes and their durations during which the combustion temperature at the point of incineration is less than 1200 degrees F.
3. Where the requirements of subsection B of this Section apply, report all periods and their durations where the TRS emissions are emitted uncontrolled or directly vented for periods longer than fifteen (15) minutes.
  4. The percent of the total number of possible contiguous twelve (12) hour block averaging periods in a quarter must include periods of startup, shutdown or malfunction, but excludes periods when the facility is not operating, and for which the twelve (12) hour block average exceeds the applicable emission limit must not exceed the following:
    - (1) One (1)% for TRS emissions from recovery furnaces; or
    - (2) Two (2)% for TRS emissions from lime kilns

*Sixth, Sec. 70. Eighth, Sec. 28. Eleventh, Sec. 23 and 24. Twelfth, Sec. 2. Sixteenth, Sec. 4. Seventeenth, Sec. 115. Eighteenth, Sec. 51.*

### **§13-504 VISIBLE EMISSIONS**

A. Fuel Burning Equipment. Equipment shall be subject to one of the standards in this section based upon the primary fuel licensed for the unit:

1. Boilers Firing #4, #5, #6 Fuel Oil.
  - a. Visible emissions from any unit firing #4, #5, or #6 fuel oil whose rated input

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capacity is less than 1000 million BTU/hr shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

b. Visible emissions from any unit firing #4, #5, or #6 fuel oil whose rated input capacity is 1000 million BTU/hr or greater shall not exceed an opacity of 20 percent on a six (6) minute block average basis for 90 percent of all six (6) minute block averages on a quarterly basis. The remaining 10 percent of all six (6) minute block averages on a quarterly basis shall be no greater than 30 percent opacity. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc. A unit subject to this section shall be required to operate and maintain a COMS.

2. Boilers Firing #2 Fuel Oil. Visible emissions from any unit firing #2 fuel oil shall not exceed an opacity of 20 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 3-hour period.

3. Boilers Firing Natural Gas or Propane. Visible emissions from any unit firing natural gas or propane shall not exceed an opacity of 10 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 3-hour period.

4. Stationary Internal Combustion Engines. Visible emissions from any stationary internal combustion engine manufactured after the year 2000 shall not exceed an opacity of 20 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

5. Wood Waste/Biomass Units. Visible emissions from any wood waste or biomass unit shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

6. Visible emissions from any fuel burning equipment not specifically listed in this section shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

For any fuel burning equipment monitored by Continuous Opacity Monitor Systems (COMS) that are not subject to 40 CFR Part 60, 63 and 75, the COMS shall record opacity on a six (6) minute block average basis, and the 3-hour period shall be a 3-hour block period beginning from midnight to 3:00, from 3:00 to 6:00, from 6:00 to 9:00, etc. For any fuel burning equipment not monitored by COMS the 3-hour period shall be any continuous 3-hour period.

B. Kraft Recovery Boilers. Kraft recovery boilers shall meet the following requirements.

1. Sources shall meet one of the following as specified in the source's air emission license.

a. Visible emissions from any kraft recovery boiler shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 3-hour period, or

b. Visible emissions from any kraft recovery boiler shall not exceed an opacity of 20 percent on a six (6) minute block average basis for 98 percent of all six (6) minute block averages on a quarterly basis and 99 percent of all six (6) minute block averages on a four consecutive quarter basis. Periods of start-up, shutdown and malfunctions are included for the purpose of calculating six (6) minute block averages over 20 percent under this subsection. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc. The source will be subject to Section 13-504(B)(2) when the source chooses this option.

2. Beginning March 12, 2004, Kraft Recovery Boiler units are required to implement corrective action, as specified in the startup, shutdown, and malfunction plan prepared for each unit under 40 CFR 63.866(a), when the average of ten (10) consecutive six (6) minute block averages results in a measurement greater than 20 percent opacity.

For any kraft recovery boiler monitored by COMS, the COMS shall record opacity on a six (6) minute block average basis, and the 3-hour period shall be a 3-hour block period beginning from midnight to 3:00, from 3:00 to 6:00, from 6:00 to 9:00, etc.

#### C. General Process Source.

1. Visible emissions from baghouses, excluding asphalt batch plant baghouses, shall not exceed an opacity of 10 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 1-hour period. The facility shall take corrective action if visible emissions from the baghouses exceed five (5) percent opacity.

2. Visible emissions from any general process source not specifically listed in this section shall not exceed an opacity of 20 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 1-hour period.

For any general process source monitored by COMS that are not subject to 40 CFR Part 60 and 63, the COMS shall record opacity on a six (6) minute block average basis, and the 1-hour period shall be a 1-hour period beginning from midnight to 1:00, from 1:00 to 2:00, from 2:00 to 3:00, etc. For any general process source not monitored by COMS the 1-hour period shall be any continuous 1-hour period.

#### D. Fugitive Emission Sources.

1. Visible emissions from a fugitive emission source shall not exceed an opacity of 20 percent, except for no more than five (5) minutes in any 1-hour period. Compliance shall be determined by an aggregate of the individual fifteen (15)-second opacity observations which exceed 20 percent in any one (1) hour.

E. Combined Stack Emissions. Except as provided for in subsection 13-504(F)(2), visible emissions from two or more of any combination of sources subject to this Chapter, which are operating and emitting visible air contaminants through one stack or vent, shall meet one of the following limits as specified in the source's air emission license.

1. The common stack opacity shall not exceed an opacity of 30 percent recorded as six (6)

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minute block averages, except for no more than three (3) six (6) minute block averages in a 3-hour block period; or

2. The common stack opacity shall not exceed 30 percent opacity on a six (6) minute block average basis for 98 percent of all six (6) minute block averages on a quarterly basis. In addition, the common stack opacity shall not exceed 40 percent opacity on a six (6) minute block average basis for 99.5 percent of all six (6) minute block averages on a quarterly basis. Periods of start-up, shutdown and malfunctions are included for the purpose of calculating block averages under this subsection. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc., as specified in the source's air emission license. Only sources which use COMS may, at their option, be subject to this paragraph; or

3. The common stack opacity for sources operating below 50% of the boiler load capacity that the common stack was designed for, based on a 12-month rolling total, shall not exceed 30 percent opacity on a six (6) minute block average basis for 95 percent of all six (6) minute block averages on a quarterly basis. In addition, the common stack opacity shall not exceed 40 percent opacity on a six (6) minute block average basis for 99 percent of all six (6) minute block averages on a quarterly basis. Periods of start-up, shutdown and malfunctions are included for the purpose of calculating block averages under this subsection. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc., as specified in the source's air emission license. Only sources which use COMS may, at their option, be subject to this paragraph.

For any combined stack emissions monitored by COMS that are not subject to 40 CFR Part 60, 63 and 75, the COMS shall record opacity on a six (6) minute block average basis, and the 3-hour period shall be a 3-hour block period beginning from midnight to 3:00, from 3:00 to 6:00, from 6:00 to 9:00, etc. For any combined stack emissions not monitored by COMS the 3-hour period shall be any continuous 3-hour period. Sources which emit through a combined stack subject to this section are not subject to the standards applicable to individual sources elsewhere in this Chapter.

F. Fuel burning sources that are restricted to less than 20 percent capacity on an annual basis.

1. Visible emissions from any fuel burning source shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

2. Visible emissions from any fuel burning source comprised of two or more units emitted through one stack shall not exceed an opacity of 40 percent on a six (6) minute block average basis, except for no more than three (3) six (6) minute block averages in a 2-hour period.

*First, Sec. 120. Eighteenth, Sec. 52. Twenty-First, Sec. 27.*

### **§13-505 CHROMIUM PARTICULATE STANDARD**

#### **A. Emissions Standards.**

The emission standards for any potential source of hexavalent chromium air emissions shall represent the lowest emission rate for hexavalent chromium which is technologically achievable. The emissions standards will be decided on a case-by-case basis, with the following conditions representing the minimum requirements:

1. Any potential source of hexavalent chromium air emissions must demonstrate compliance with the air quality standards;
2. If a source cannot demonstrate to the satisfaction of the Board a technique for measuring hexavalent chromium at the emission source, its modeled air quality impact shall be derived from its total chromium emissions and shall not exceed a 24-hour ambient concentration of 25 nanograms per cubic meter;
3. The modeled impact derived from hexavalent chromium emissions shall not exceed the limits specified in Section 13-408 of this Ordinance.

**B. Exemptions.**

Chromium emissions resulting from metal plating operations, the preparation of chrome tanning liquors, or from processes, including leather processing, in which chromium is present only in the trivalent oxidation state shall not be subject to these emission requirements.

**§13-506 CHLORINE AND CHLORINE DIOXIDE EMISSION STANDARD**

**A. Scope.** This regulation applies to all bleach plants of all existing pulp and paper making facilities.

**B. Standard.**

1. Chlorine. No person shall emit or cause to be emitted into the ambient air from all bleach plants of any pulp and paper making facility chlorine emissions greater than 3.0 pounds per hour.
2. Chlorine Dioxide. No person shall emit or cause to be emitted into the ambient air from all bleach plants of any pulp and paper making facility chlorine dioxide emissions greater than 3.0 pounds per hour.

**C. Continuous Emissions Monitoring.** Any owner or operator, of a pulp and paper making facility subject to the provisions of this Section shall install, calibrate, operate and maintain in good working order a continuous emission monitoring system as approved by the Board to monitor and record the emissions of chlorine inclusive of chlorine dioxide. This shall be effective upon the Board's determination that continuous emission monitors for the compound in question is demonstrated as both available and of sufficient quality for the purpose of compliance determination. The affected facilities shall have 180 days from the Board's decision to require continuous emission monitors to comply with this Section unless otherwise ordered by the Board.

**D. Emissions Control.** If scrubbers are employed to attain the standards in subsection B, any owner or operator of a pulp and paper facility subject to this Section shall install, calibrate, operate and maintain continuous scrubber recycle flow, Oxidation Reduction Potential, (ORP), scrubber

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pressure drop, and pH meters. Other measurement methods that provide for a measure of scrubbing media chlorine and chlorine dioxide uptake ability may be utilized with the approval of the Board.

*Eighth, Sec. 29. Eleventh, Sec. 25. Seventeenth, Sec. 116.*

### §13-507 PAPER COATING LINE EMISSIONS

**A. Scope.** This regulation applies to all roll, knife and rotogravure coaters and drying ovens of paper coating lines at stationary sources of volatile organic compounds.

**B. Standards.** The owner or operator of a paper coating line subject to this regulation shall comply with one of the following limitations:

**1. Low Solvent Content Coating Technology.** The owner or operator of a paper coating line subject to this regulation shall not cause or allow or permit the discharge into the atmosphere from any coating volatile organic compounds (VOC) in excess of 2.9 pounds of VOC per gallon of coating (excluding water and negligibly reactive VOC) delivered to the coating applicator from a paper coating line.

**2. Add-on Air Pollution Control Device.** The owner or operator of a paper coating line subject to this regulation which is controlled by an add-on air pollution control device shall operate the add-on control device at all times the paper coating line is operating such that the overall efficiency of the abatement equipment (the efficiency of the capture system multiplied by the efficiency of the control device) reduces the VOC emission to a rate equal to 4.8 pounds VOC emitted per gallon of solids applied to the substrate on a continuous basis.

*Eighth, Sec. 30.*

### §13-508 NEW SOURCE PERFORMANCE STANDARDS

Any new source subject to this Chapter must not violate New Source Performance Standards set forth in 40 CFR Part 60; subparts A, D, Da, Db, Dc, E, K, Ka, Kb, O, BB, GG and Appendices, which are incorporated by reference herein.

*First, Sec. 121. Eighth, Sec. 31. Tenth, Sec. 39. Eleventh, Sec. 26. Seventeenth, Sec. 117. Twentieth, Sec. 35.*

### §13-509 PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR)

Any source subject to this Chapter shall be subject to applicable provisions of Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) as set forth in 40 CFR Parts 51 and 52, which are incorporated by reference herein.

*Twenty-First, Sec. 28.*

## **PART 6**

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### **OFFSET REQUIREMENTS**

#### Section

- §13-601 Scope
- §13-602 Use of Offset Credits
- §13-603 Generation of Offset Credits
- §13-604 Quantification of Offset Credits for Credit Generators

*Seventeenth, Sec. 118. Twentieth, Sec. 36.*

### **§13-601 SCOPE**

#### A. General

1. Offset credits are the method as set forth in this Part, by which excess emissions reductions of a nonattainment pollutant at one source are used to “offset” the potential emission increase from a new source or modification to produce a positive net air quality benefit. The offset credit must be greater than the potential emission increase from a new source or modification including growth and secondary emissions (except where superseded by a higher ratio requirement as set forth in this Part).

#### B. Applicability

1. The following sources that seek to locate or expand within the geographical bounds of the Town of Jay must obtain offset credits as provided for in this Part:
  - a. Any new source or proposed new source that has the potential to emit significant emissions of the nonattainment pollutant after application of Lowest Achievable Emission Rate (LAER);
  - b. Any existing source that is a major source for the nonattainment pollutant, which has or is proposing a modification that would result in a significant emissions increase of the nonattainment pollutant after application of LAER;
  - c. Any existing source that is a minor source for the nonattainment pollutant, which has or is proposing a modification that would result in an increase of the source’s potential to emit the nonattainment pollutant by a level of significant emissions after application of LAER; or
  - d. Any source for which b or c above occurs by virtue of a relaxation after August 7, 1980 of any federally enforceable limitation or license condition.

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2. Sources that seek to voluntarily generate and/or trade offset credits will be subject to provisions in this Part pertaining to generation of offset credits.

### C. Exemptions

1. Offsets for NO<sub>x</sub> emissions are not required in those areas that have received a waiver of certain NO<sub>x</sub> controls from the United States Environmental Protection Agency under Section 182(f) of the Clean Air Act.

*First, Sec. 122. Seventeenth, Sec. 119. Eighteenth, Sec. 53. Twentieth, Sec. 37.*

## §13-602 USE OF OFFSETS

### A. General

1. For sources that have a Jay Air Emission Permit, offset credits must be certified by the Board before use as offset credits.
2. All trades involving VOC offset credits or an increase in VOC emissions requiring offsets pursuant to this Part must be presented to the Board for Board approval.
3. Use of offset credits is subject to all other applicable laws.

### B. Use of Offset Credits

1. Sources that are subject to this Part must obtain offset credits for that non-attainment pollutant to provide a positive net air quality benefit and may not commence operation until the Board determines that emission reductions of the nonattainment pollutant have occurred and that all requirements of this Part are met. Offset credit reduction must be federally enforceable by the time the air emission permit for the user is approved by the Board.

#### 2. NO<sub>x</sub> and Volatile Organic Compound (VOC) Offset Credits

a. For a new source or modification subject to this Part, the offset ratio for VOC and NO<sub>x</sub> is based on the current ozone nonattainment area classification or other designation for the area in which the new source or modification will locate, and on the distance between the new source or modification and the source from which offsets are obtained, as specified below. If the location of a new source or modification is subject to more than one classification, the more restrictive offset ratio shall apply.

b. NO<sub>x</sub> offset credits may be used to offset increased VOC emissions, and VOC offset credits may be used to offset increased NO<sub>x</sub> emissions, if approved by the USEPA, the State, and the Board. In areas subject to a NO<sub>x</sub> waiver under section 182(f) of the Clean Air Act, NO<sub>x</sub> credits may be used to offset VOC emissions to the extent allowed under the Clean Air Act and upon written notification of approval from the USEPA. The same number of offset credits must be obtained whether NO<sub>x</sub> or VOC credits are used. The Board shall only approve offset credits if the same estimated ozone reduction will be achieved whether VOC offset credits or NO<sub>x</sub> offset credits are used.

c. Offset credits for VOC and NO<sub>x</sub> shall be obtained from sources in the same ozone nonattainment area or area previously designated as nonattainment for the 1-hour standard, or attainment area, except that such offset credits may be obtained from a source in another ozone nonattainment area or attainment area if the condition of either sub-paragraph i or ii below, whichever is relevant, are met:

i. For a new source or modification subject to this Part, locating in an ozone nonattainment area or area previously designated as nonattainment for the 1-hour standard:

(a) The ozone nonattainment area from which offset credits are obtained has an equal or higher (i.e. more serious) nonattainment classification than the ozone nonattainment area in which the new source or modification subject to this Part is locating; and

(b) Emissions from the ozone nonattainment area from which offset credits are obtained contribute to a violation of the National Ambient Air Quality Standard in the ozone nonattainment area in which the new source or modification subject to this Part is locating; and

(c) Offset credits are obtained based on the classification of the area in which the new source or modification is locating, according to the minimum offset ratios listed below:

<b><u>Ozone Classification for Area In which New Source or Modification is Locating</u></b>	<b><u>Minimum Offset Ratio</u></b>
Serious nonattainment area	1.2 to 1
Moderate nonattainment area	1.15 to 1
Marginal nonattainment area	1.1 to 1
Nonclassified area (not included in the OTR)	>1 to 1
Marginal or nonclassified area (in the OTR)	1.15 to 1

(d) Offset credits must be obtained from states within the Ozone Transport Region (OTR); if offset credits are obtained from OTR states outside of New England, they must be obtained at a ratio of 2.0 to 1.

ii. For a new source or modification subject to this Part locating in an ozone attainment area, the source from which the offset credits are being obtained is located within another ozone attainment area or within an ozone nonattainment area, either of which are located in a state in the Ozone Transport Region (OTR). Sources locating in an ozone attainment area must obtain VOC offset credits at a ratio of 1.15 to 1. Sources locating in an ozone attainment area that does not have a waiver of NO<sub>x</sub> requirements under section 182(f) of the Clean Air Act must obtain NO<sub>x</sub> offset credits at a ratio of 2.0 to 1 for offset credits obtained

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outside of New England, and 1.15 to 1 for offset credits obtained within New England.

*First, Sec. 123. Sixth, Sec. 71. Eighth, Sec. 32. Seventeenth, Sec. 120. Twentieth, Sec. 38.*

### **§13-603 GENERATION OF OFFSET CREDITS**

A. All offset credits must be quantifiable and calculated according to the same method and averaging time for the base case and future case.

1. For offset credits generated within the State of Maine, the base case from which to measure offset credits shall be the actual emissions for any consecutive 24-month period after May 31, 1995. To be creditable as offsets, emissions reductions made in Maine must be made on or after May 31, 1995.

2. To be creditable as offsets, emissions reductions made in states other than Maine must be made on or after November 15, 1990.

B. When quantifying the amount of offset credits generated by reducing actual emissions from existing sources that are exceeding emission limits, only those emission reductions below the licensed, permitted or otherwise allowable emissions for the existing source are creditable as offset credits.

C. In no case shall offset credits be allowed for reduction in emissions that were required by any federally enforceable license condition or other requirements of the Clean Air Act or other applicable federal, state or Town of Jay law, regulation or requirement. If incidental emission reductions not required under the Clean Air Act or other federal, state or Town of Jay law, regulation or requirement meet the applicable requirements of this Part for offset credits, such emissions reductions may be creditable as offset credits.

D. Prior to the new source or modification subject to this Part commencing operation, the credit generator must have made real and permanent reductions in actual emissions as certified by the Board. Where the new source or modification is a replacement for a facility that is being shut down in order to provide the necessary offsets, the Board may allow up to 180 days for shakedown of the new source or modification before the existing facility is required to cease operation.

E. Prior to the new source or modification commencing operation, the credit generator must demonstrate to the Board that the offset credits have been certified by the Board and will provide other documentation and information as requested by the Board.

F. Emission reductions will qualify as offset credits only to the extent that they are in surplus of the following:

1. emission reductions required by then existing or reasonably foreseeable federal laws and requirements for the nonattainment pollutant, including without limitation proposed rules and rules promulgated with future or no established compliance dates, proposed MACT standards, proposed rules or standards, programs included in an attainment demonstration and Control Technology Guidelines;

2. emission reductions of the nonattainment pollutant that are required by then existing or reasonably foreseeable state or Town of Jay laws, regulations or requirements, including without limitation proposed rules, legislation pending before the Maine Legislature, draft amendments to Town of Jay Ordinance, or proposed license or permit limits;
3. emission reductions required by state laws specifically identified in the SIP as being necessary for the State to meet the Clean Air Act requirements;
4. emission reductions already relied on for SIP planning purposes;
5. emission reductions used by, or that will be required for, the source to meet any other federal, state or Town of Jay regulatory requirements.

G. Emission reductions may qualify as offset credits only if they are made federally enforceable through changes in source licenses, permits, SIP revisions, or applicable EPA-approved state regulations that reflect a reduced level of actual or allowable emissions.

H. To qualify as offset credits, emission reductions must be generated by a source that has been licensed, permitted or otherwise allowed to emit and has been actually operating and emitting the pollutant for at least 2 years.

I. To qualify as offset credits, shutdowns or curtailments of plant production resulting in reduced emissions must meet the following conditions:

1. The source must demonstrate to the satisfaction of the Board that demand for the services of products affected by the shutdown or curtailment will not shift to other similar sources in the state that are not required to offset new emissions, such that the expected decrease in emissions would fail to occur; and
2. If the owner or operator of a permitted new source or modification subject to this Part plans to generate and trade offset credits, any shutdown or curtailment will require an amendment to its air emission permit and license.

J. Prior to the use of VOC and NO<sub>x</sub> offset credits, the credit generator must demonstrate to the Board that the portion of the credits to be used during the ozone season are generated primarily during the ozone season.

K. Offset credits from shutdowns may be used by the owners of the facility shutting down at a new site within the State, or may be transferred by the owners to another facility. The source using offset credits from shutdowns must demonstrate to the Board, through photochemical grid modeling or another demonstration as approved by the Board, that the use of these offset credits will result in a net air quality benefit in Maine, as compared with emissions prior to the shutdown.

L. NO<sub>x</sub> offset credits may be granted for emission reductions made in an area with a NO<sub>x</sub> waiver under section 182(f) of the Clean Air Act only upon written notification of approval from the USEPA.

*First, Sec. 124. Seventeenth, Sec. 120. Twentieth, Sec. 39.*

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### §13-604 QUANTIFICATION OF OFFSET CREDITS

A. Offset credits shall be quantified in an average hourly or daily emission rate expressed in pounds.

B. Quantification of offset credits shall follow the two-step process set forth below, including quantification of the base credit and adjustment of the base credit for compliance assurance.

C. **Step One:** Replicable methods must be used to establish the baseline which reflects the lower of actual or allowable emissions and which serves as the level below which emission reductions are considered surplus, and to quantify base credit reflecting the real emission reduction below baseline. Replicable methods must include the following, as appropriate, for the specific offset credit application:

1. Direct measurement of emissions by use of a test method contained in 40 CFR Part 60, Appendices; or

2. Parametric Monitoring programs approved by the Board where the owner of operator identifies one or more indicators of the performance of an applicable control device or process at a pollutant specific emission unit subject to this Part, and for each indicator identified, provides a credible demonstration of the validity of the indicator monitored which includes:

a. The demonstrated relationship between the indicator and emissions from the emissions sepcific unit; and

b. The demonstrated margin of compliance with the applicable emission standard; and

c. The potential variability of emissions under normal and anticipated operating conditions; or

3. Calculation equations which are a function of process and control equipment parameters, mass-balance calculations which are a function of inventory, usage, and disposal records, activity levels and/or throughout production consistent with good engineering practice and methods; or

4. use of EPA-approved emission factors and emission calculation methods; or

5. other methods approved by the Board.

D. **Step Two:** Once the base credit has been established, an adjustment shall be made by applying a compliance assurance multiplier reflecting the method of measurement. Emission reductions will be certified by the Board as offset credits after application of a compliance assurance multiplier. The applicable compliance assurance multiplier will be determined by the Board as provided in the table below.

<u>Method of Measurement</u>	<u>Compliance Assurance Multiplier</u>
Irreversible process change	1.0
Compliance Assessment by Direct	

Determination:

Mass balance reconciliation	0.95
Continuous emission monitoring	0.95

Compliance Assessment by Testing:

Periodic stack test/emission test:	0.85
Testing of capture efficiency and control:	as set by the Board

Emission Determinations using estimates of capture and control, emission factors, and/or all other methods:	0.50-0.80
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E. Once the offset credit has been certified by the Board, the value of the resulting offset credit may be adjusted only to reflect calculation errors prior to use pursuant to this Part.

*First, Sec. 125. Seventeenth, Sec. 120. Twentieth, Sec. 40.*

**PART 7**  
**MISCELLANEOUS AIR POLLUTION CONTROL REQUIREMENTS**

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Section

- §13-701 Reasonably Available Control Technology (RACT) For Facilities that Emit Nitrogen Oxides (NO<sub>x</sub>)
- §13-702 Reasonably Available Control Technology (RACT) for Facilities that Emit Volatile Organic Compounds (VOC)
- §13-703 Volatile Organic Compound (VOC) Emissions from Solvent Degreasers

*Seventeenth, Sec. 121.*

**§13-701 REASONABLY AVAILABLE CONTROL TECHNOLOGIES (RACT) FOR FACILITIES THAT EMIT NITROGEN OXIDES (NO<sub>x</sub>)**

**A. Affected facilities and requirements**

Any source that has an existing Jay Air Emission Permit must:

1. submit to the Board a copy of any NO<sub>x</sub> RACT application submitted to the Maine Department of Environmental Protection or to the Environmental Protection Agency;
2. submit to the Board a copy of any draft NO<sub>x</sub> RACT Order the source receives from the Maine Department of Environmental Protection or the Environmental Protection Agency;

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3. submit to the Board a copy of any final NO<sub>x</sub> RACT Order approved by the Maine Department of Environmental Protection; and
4. submit to the Board any other demonstration of implementation of NO<sub>x</sub> RACT.

### **B. Amendment of Permit**

The Board may amend any Jay Air Emission Permit to incorporate modifications that implement NO<sub>x</sub> RACT as set forth in Maine Department of Environmental Protection Regulations and the Clean Air Act. Permit amendments may include but are not limited to:

1. a comprehensive inventory of all affected NO<sub>x</sub>-emitting equipment;
2. emission limits for all affected NO<sub>x</sub>-emitting equipment;
3. any schedules requiring compliance with emission limits;
4. procedures for determining initial compliance with emission limits;
5. procedures for assessing compliance with emission limits;
6. record keeping requirements; and
7. reporting requirements.

*Eighteenth, Sec. 54 and 55.*

## **§13-702 REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) FOR FACILITIES THAT EMIT VOLATILE ORGANIC COMPOUNDS (VOC)**

### **A. Affected Facilities and Requirements**

Any source that has an existing Jay Air Emission Permit must:

1. submit to the Board a copy of any VOC emission reduction plan and supporting information filed with the Maine Department of Environmental Protection or the Environmental Protection Agency;
2. submit to the Board a copy of any draft VOC RACT draft Order the source receives from the Maine Department of Environmental Protection or the Environmental Protection Agency;
3. submit to the Board a copy of any final VOC RACT Order approved by the Maine Department of Environmental Protection; and
4. submit to the Board any other demonstration of implementation of VOC RACT.

### **B. Amendment of Permit**

The Board may amend any Jay Air Emission Permit to incorporate modifications that implement VOC RACT as set forth in Maine Department of Environmental Protection Regulations and the Clean Air Act. Permit modifications may include, but are not limited to:

1. a comprehensive inventory of all VOC-emitting equipment or processes;
2. emission limits for VOC-emitting equipment;
3. schedule for compliance with emission limits;
4. procedures for determining initial compliance with emission limits;
5. procedures for assessing continuous compliance with emission limits;
6. recordkeeping requirements;
7. reporting requirements.

*Eighteenth, Sec. 56.*

### **§13-703 VOLATILE ORGANIC COMPOUND (VOC) EMISSIONS FROM SOLVENT DEGREASERS**

#### **A. Affected facilities and requirements**

Any source that has an existing Jay Air Emission Permit and that is an owner of a solvent degreaser must, unless otherwise exempt by state or federal law:

1. submit to the Board a copy of any Initial Compliance Certification submitted to the Maine Department of Environmental Protection or to the Environmental Protection Agency;
2. submit to the Board a copy of any Certification records submitted to the Maine Department of Environmental Protection;
3. submit to the Board a copy of all testing and certification of solvent degreaser control devices or systems; and
4. submit to the Board a copy of any reports of control device failure;
5. submit to the Board any other demonstration of compliance with testing, evaluating and limiting VOC emissions from solvent degreasers and with minimum requirements for equipment and operation standards to reduce VOC emissions.

#### **B. Amendment of Permit**

The Board may amend any Jay Air Emission Permit to incorporate modifications that implement reductions of VOC from solvent degreasers as set forth in Maine Department of Environmental

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Protection Regulations and the Clean Air Act. These modifications may include, but are not limited to:

1. equipment and operations standards;
2. test methods;
3. methods for handling, storage and disposal of materials containing VOC;
3. compliance certification; and
4. recordkeeping and reporting requirements.

*Seventeenth, Sec. 121.*

### **PART 8**

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### **ASSURED COMPLIANCE**

Section

§13-801 Specific Source Surveillance

§13-802 Assured Compliance

*Seventeenth, Sec. 121.*

### **§13-801 SPECIFIC SOURCE SURVEILLANCE**

#### **1. Scope and Applicability**

A. This Section shall apply to all Jay Air Emission Permit holders.

B. The owner or operator of any of the following source categories shall install, calibrate, operate, maintain, and audit CEMS for continuously monitoring the pollutants specified as follows:

1. Fuel burning equipment with a heat input capacity of greater than 100 million British Thermal units (BTU) per hour shall continuously monitor for opacity, except when:
  - a. Natural gas or liquefied petroleum gas is the only fuel burned, or
  - b. The annual average capacity factor for any non-gaseous fuel or combination of non-gaseous fuels is demonstrated to be less than 30% as required by a federally enforceable permit condition;
2. Each fossil fuel fired steam generator which has been required to install sulfur dioxide air pollution control apparatus shall continuously monitor for sulfur dioxide;

3. Any fuel burning equipment with a heat input capacity of greater than 200 million BTU per hour shall continuously monitor for nitrogen oxides unless the owner or operator demonstrates that the annual average capacity factor is less than 30% and projected to remain at less than 30% as required by a federally enforceable permit condition;

4. Each fossil fuel fired steam generator which is required to measure sulfur dioxide or nitrogen oxides pursuant to this Section shall continuously monitor for percent oxygen or percent carbon dioxide; and

C. The Board shall require the owner or operator of any stationary source to install, calibrate, operate, maintain, and audit CEMS for continuously monitoring the applicable pollutants if any of the following conditions exist:

1. Any statute, regulation, permit condition or Board action requires the source owner or operator to install a specified CEMS;

2. A source is subject to the New Source Performance Standards (40 CFR Part 60) or National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61) which require the source owner or operator to comply with a specified opacity or emission limit, and to install a specified CEMS;

3. A source owner or operator chooses to limit its potential to emit by accepting federally enforceable permit conditions which restrict its hours of operation or operating configuration, type or amount of material combusted, stored, or processed, or level of production; and a CEMS is determined to be necessary to ensure that these permit conditions are not violated;

4. A source owner or operator uses air pollution control equipment in order to maintain compliance with an opacity or emission limit; and a CEMS is determined by the Board to be necessary to ensure such compliance;

5. The Board determines that a source's emissions have a significant impact on air quality and continuous monitoring of emissions with a CEMS is necessary to ensure that the ambient air quality standards are achieved and maintained.

D. The Board may require the owner or operator of any stationary source to install, calibrate, operate, maintain, and audit a CEMS for continuously monitoring the applicable pollutants if a documented violation occurs of any of the applicable opacity or emission limits found in the Ordinance or in the source's permit;

E. The Board may on a case by case basis allow compliance with this section through alternative emission monitoring and reporting requirements if the Board determines that installation of a CEMS cannot be implemented by a source owner or operator due to physical plant limitations or extreme economic burdens. In such cases the Board shall determine alternative emission monitoring and reporting requirements to satisfy the intent of this Part. Examples of such special cases include, but are not limited to, the following:

1. When installation of a CEMS would not provide accurate determinations of emissions (e.g. condensed, uncombined water vapor may prevent an accurate determination of opacity);

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2. When the annual average capacity factor for the affected facility is less than 30% and is restricted by permit condition to remain at less than 30%;
3. When the Board determines that the requirements would impose an extreme economic burden on the source owner or operator; or
4. When the Board determines that the CEMS cannot be installed due to physical limitations at the facility.

F. Lime kilns equipped with sulfur removal devices approved by the Board shall not be required to continuously monitor for sulfur dioxide.

G. Fuel burning equipment controlled by wet scrubbers approved by the Board shall not be required to continuously monitor for opacity unless such equipment is required by New Source Performance Standards 40 CFR Part 60 to continuously monitor for opacity.

H. Emission monitoring systems, including but not limited to continuous emission monitoring systems, continuous opacity monitoring systems and predictive emissions monitoring systems, must operate and record accurate and reliable data at all times the emissions unit associated with the emission monitoring system is operating with the following exceptions:

1. CEMS-periods not to exceed 10% of the associated unit operating time, when performing Quality Assurance Quality Control (QAQC) procedures on the given emission monitoring system or unavoidable malfunctions of components of the monitoring system unless otherwise specified by the Board.
2. COMS-periods, not to exceed 5% of the associated emission unit operating time, when performing Quality Assurance Quality Control (QAQC) procedures on the given emission monitoring system or unavoidable malfunctions of components of the monitoring systems unless otherwise specified by the Board.

All emission monitoring systems shall meet, at a minimum, the performance specifications, QAQC testing requirements and audit requirements set forth in applicable federal, state, and Jay laws and permit requirements to assure accurate and reliable data collection.

### **2. Reporting and Quality Control Requirements.**

A. All sources required by state or federal requirements or this Ordinance to operate a CEMS shall provide the Board with emission reports for opacity excess emission and gaseous excess omissions on a quarterly basis. These reports shall include but not be limited to the following information:

1. The name of the air contaminant emission standard exceeded;
2. The air contaminant emission standard;
3. The amount of air contaminant emitted in excess of the applicable emission standard expressed in the units of the standard;
4. Date and time of commencement and completion of each time period of excess emission;

5. Specific cause of the excess emission and the corrective action taken;
6. Date and times of each period where the CEMS was not operational, and the total percentage of the source operating time when the CEMS was not operational;
7. Specific cause of each period where the CEMS was not operational, and the corrective action taken;
8. Date and times of each period where the CEMS was out of control and the total percentage of the source's operating time when the CEMS was out of control; and
9. Specific cause of each out-of-control period and the corrective action taken.

B. When no excess emissions have occurred and the CEMS have not been inoperative, repaired, or adjusted, such information shall be provided in a quarterly report.

C. For a CEMS monitoring gaseous emissions of sulfur dioxide, nitrogen oxides, carbon monoxide, oxygen, or carbon dioxide, the quality assurance requirements and procedures described in 40 CFR Part 60, Appendix F, shall apply. At a minimum, all requirements specified in Procedure 1 of Appendix F shall be met and:

1. Each source owner or operator shall develop and maintain a copy of its written quality control procedures, henceforth known as the QC plan, for implementing its quality control program for each CEMS within six (6) months of the initial startup of each CEMS installed unless a different date is approved by the Board. The owner or operator shall keep a complete copy of its QC plan including updates in a readily accessible location for a period of at least six years and shall make these records available to the Board upon verbal or written request;
2. Each source owner or operator shall review the QC plan and all data generated by its implementation at least once each year and shall revise or update the QC plan, as necessary, based on the results of the annual review. The revised QC plan must be available for on-site review by the Board at any time;
3. The Board may request revision of the QC plan at any time based on the results of emission report reviews, inspections, audits, review of the QC plan, or any other information available to the Board.

### **3. Compliance/Enforcement.**

A. CEMS data showing an excess of any applicable emission limit shall be evidence that the source has violated the limit. The permit holder has the burden of demonstrating that CEM data is inaccurate.

B. Failure to provide accurate data for all periods in which the CEMS is required to be operated under this Part shall constitute a violation. Failure to report a CEMS malfunction according to Chapter 3 is conclusive of any violation demonstrated by that CEMS.

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C. The Board may use CEMS data for compliance determinations, enforcement actions, emissions inventory, and associated permitting issues.

### 4. Compliance Schedule.

A. The owner or operator of a new or modified source subject to this Part shall achieve final compliance with this Part within 60 days of achieving maximum load or within 180 days of initial startup.

B. For all other existing specification monitoring systems previously required by federal regulation, this Ordinance, air emission permit condition or consent agreement, compliance with this Part is effective immediately.

*Seventeenth, Sec. 121. Eighteenth, Sec. 57. Twentieth, Sec. 41, 42, 43 and 44.*

## §13-802 ASSURED COMPLIANCE

**1. Scope and Applicability.** All Jay Air Emission Permit applicants and permit holders shall comply with this Part.

**2. Compliance Certification.** All owners and operators subject to this Part shall submit compliance certification in accordance with Chapter 3 that includes the following information:

A. The identification of each term or condition of the permit that is the basis of the certification;

B. A certification of compliance status with all Applicable requirements, state requirements, and Town of Jay requirements by a responsible official, including whether compliance was continuous or intermittent;

C. A statement of methods used for determining compliance currently and over the reporting period according to an Assured Compliance Plan required by this Part;

D. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the CAA; and

E. Such other facts and information as required under state and federal law or that the Board may require to determine the compliance status of the source.

**3. Assured Compliance Plan.** All owners and operators subject to this Part shall develop and submit to the Board an Assured Compliance Plan. The Plan shall identify the activities necessary to affirmatively demonstrate that compliance is being achieved with all Permit emission and discharge limitations and standards. The emission monitoring methods described in the Plan shall be sufficiently representative, accurate, precise, reliable, frequent and timely to determine whether a deviation from any applicable emission limitation or standard occurs. Compliance status must be demonstrated on a continuous basis unless the Board determines that a continuous monitoring method cannot be implemented due to physical plant limitations or extreme economic burdens and approves an alternate demonstration. Depending on the type of emission limitation or standard, regulated air pollutant and emissions unit, an Assured Compliance Plan shall incorporate one or more of the following:

- A. Continuous emission monitoring systems;
- B. Continuous process or control device parameter monitoring systems or procedures;
- C. Emission calculations based on accepted engineering estimation techniques;
- D. Maintenance and analysis of records of fuel or raw materials usage;
- E. Periodic verification of emissions, process parameters or control device parameters using portable or situ measurement devices;
- F. Recording results of a program or protocol to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices;
- G. Any other form of measuring emissions, process parameters or control device parameters that can achieve the requirements of this Part.
- H. A description of the compliance status of the source with respect to all Town of Jay, State of Maine and Applicable requirements and a certification that compliance can be achieved with all such requirements.

**4. Parameter Monitoring in Assured Compliance Plan.** If the owner or operator proposes to use the monitoring of process or control device parameters as part of an Assured Compliance Plan, the owner or operator may;

- A. Establish and demonstrate a correlation specification between the monitored parameters and the applicable emission limitations or standards; and
- B. Propose to establish demonstrated compliance parameter levels to act as surrogate measurements of compliance with the applicable emission limitation or standard.

**5. Permit Application Requirements.** In accordance with this Chapter, the owner or operator shall submit a proposed Assured Compliance Plan in any permit application, amendment application or renewal application that can satisfy the requirements of this Part for every applicable emission limitation or standard at each emissions unit. For a permit amendment, the owner or operator shall submit the portion of the Plan which is applicable to the permit amendment. The application shall contain:

- A. All information, descriptions, explanations, justification, and supporting documentation required by this Part;
- B. A description of all elements, components and procedures of the proposed Assurance Compliance Plan including all proposed performance specifications, equipment, installation and calibration gas specifications, data reduction and calculation procedures, quality assurance procedures, and data availability;
- C. A description of the physical and operational characteristics of the emissions unit that may affect the performance of the Assured Compliance Plan;

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- D. Documentation of monitoring methodologies evaluated for use in an Assured Compliance Plan;
- E. An demonstration of how the proposed Assured Compliance Plan provides for the particular emissions unit sufficiently representative, accurate, precise, reliable, frequent and timely data to determine whether a deviation occurs in order to determine continuous compliance;
- F. A test plan and schedule for conducting performance verification tests or correlation tests;
- G. Any other supporting information; and
- H. The signature of a responsible official.

**6. Assured Compliance Reporting.** The responsible official of a source subject to this Part shall submit to the board, at least quarterly, a report which summarizes the results of the Assured Compliance Plan that shall include but is not limited to:

- A. Records, data and test results;
- B. Results of quality assurance tests;
- C. Steps taken during instances of monitoring equipment inoperation to assure compliance;
- D. Deviations from emission limitations and standards; and
- E. A certification of compliance with all Permit emission limitation requirements and conditions by a responsible official and as required by this Part.

The Assured Compliance Report may be submitted as part of other required quarterly reporting.

**7. Permit Conditions.** Each Permit shall contain conditions that require the owner or operator to comply with the requirements of this Part. Such conditions shall include but are not limited to:

- A. Implementation of the Assured Compliance Plan for determining the compliance status of each emissions unit and emission;
- B. The completion of performance verifications tests and correlation tests and submittal of test results to the Board;
- C. Record keeping Requirements that shall include but not be limited to 1) the date, place and time of sampling or measurements; 2) the date(s) analyses were performed; 3) the company or entity that performed the analysis; 4) the analytical techniques or methods used; 5) the results of such analysis; and 6) the operating conditions existing at the time of sampling or measurement;
- D. Submission of Assured Compliance Reports to the Board; and
- E. Provisions for Permit modifications or amendment to include additional components of an Assured Compliance Plan or periodic Board review of Assured Compliance Plan during term of a Permit.

*Seventeenth, Sec. 121. Eighteenth, Sec. 58, 59 and 60. Twentieth, Sec. 45.*

## **PART 9**

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### **HAZARDOUS AIR POLLUTANTS**

Section

§13-901 HAP Emission Limitations

#### **§13-901 HAP EMISSION LIMITATIONS**

##### **A. Applicability**

###### **1. Promulgated HAP emission limitations**

A new or existing HAP source is subject to any HAP emissions limitation promulgated by EPA if one or more of the following conditions occur:

- a. The source meets the criteria for applicability of such HAP emission limitation;
- b. The source has proposed construction of a HAP source; and
- c. The source has proposed reconstruction of a HAP source.

###### **2. Case-by-case HAP determinations**

The Board may establish HAP emission limitations on a case-by-case basis, taking into consideration any MACT or GACT emission limitation applicable to a HAP source and any State of Maine HAP requirements.

###### **3. National Emission Standards for Hazardous Air Pollutants for Source Categories**

Any owner or operator of processes that produce pulp, paper, or paperboard and that use kraft, soda, sulfite, or semichemical pulping processes using wood shall comply with the provisions of 40 CFR Part 63, subparts S (Pulp and Paper Industry), MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills), JJJJ (Paper and Other Web Coating), and DDDDD (Industrial, Commercial, and Institutional Boilers and Process Heaters), which are incorporated herein by reference.

##### **B. Hazardous Air Pollutants from the Pulp and Paper Industry**

1. The provisions of this Sub-Section apply to any owner or operator of processes that produce pulp, paper, or paperboard and that use kraft, soda, sulfite, or semichemical pulping processes using wood or mechanical pulping processes using wood, or any process using secondary or non-wood fibers. Each existing source shall achieve compliance with this Sub-Section no later than

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April 16, 2001 unless a different date is approved by the Board but in any event no later than April 17, 2007. Each new source shall achieve compliance upon start-up. Each owner or operator with affected process equipment shared by more than one type of pulping process shall comply with the requirements of this subsection that achieves the maximum degree of reduction in HAP emissions.

### 2. Standards for the pulping system at existing sources.

At existing sources, the owner or operator of each pulping system using kraft processes shall control the total HAP emissions from the following equipment systems:

- a. Each low volume high concentration (LVHC) system;
- b. Each knotter system with emissions of 0.05 kilograms or more of total HAP per megagram or ODP (0.1 pounds per ton);
- c. Each screen system with emissions of 0.10 kilograms or more of total HAP per megagram of ODP (0.2 pounds per ton);
- d. Each knotter and screen system with emissions of 0.15 kilograms or more of total HAP per megagram of ODP (0.3 pounds per ton);
- e. Each pulp washing system;
- f. Each decker system that uses any process water other than fresh water or paper machine white water;
- g. Each decker system that uses any process water other than fresh water or paper machine white water or uses any process water with a total HAP concentration greater than 400 parts per million by weight; and
- h. Each oxygen delignification system.

### 3. Standards for the pulping system at new sources.

At new sources, the owner or operator of each pulping system using kraft processes shall control the total HAP emissions from the following equipment systems:

- a. Each low volume high concentration (LVHC) system;
- b. Each pulp washing system;
- c. Each oxygen delignification system;
- d. Each knotter system;
- e. Each screen system;
- f. Each decker system; and

g. Each weak liquid storage tank.

4. Control device requirements for pulping systems.

Equipment systems listed in paragraphs 2 and 3 above shall be enclosed and vented into a closed-vent system and routed to a control device that must:

- a. reduce total HAP emissions by 98 percent or more by weight;
- b. reduce the total HAP concentration at the outlet of the thermal oxidizer to 20 parts per million or less by volume, corrected to 10 percent oxygen on a dry basis;
- c. reduce total HAP emissions using a thermal oxidizer designed and operated at a minimum temperature of 871 degrees C (1600 degrees F) and a minimum residence time of 0.75 seconds; or
- d. reduce total HAP emissions using a boiler, lime kiln, or recovery furnace by introducing the HAP emission stream with the primary fuel or into the flame zone.

5. Standards for closed-vent systems.

Each enclosure and closed-vent system for capturing and transporting vent streams that contain HAP shall:

- a. maintain negative pressure at each enclosure or hood opening and shall be maintained in the same closed and sealed position as during any performance test except when necessary to use the opening for sampling, inspection, maintenance or repairs;
- b. each component of the closed-vent system that is operated at a positive pressure and located prior to a control device shall be designed for and operated with no detectable leaks as indicated by an instrument reading of less than 500 parts per million by volume above background;
- c. each bypass line in the closed-vent system that could divert vent streams containing HAP to the atmosphere shall either:
  - i. install, calibrate, maintain and operate a flow indicator that provides a record of the presence of gas stream flow in the bypass line at least once every 15 minutes and that is calibrated and maintained according to the manufacturer's specifications; or
  - ii. maintain a car seal or other seal placed on the bypass line valve or closure mechanism in such a way that the valve or closure mechanism cannot be opened without breaking the seal.

6. Periods of excess emissions shall not be a violation provided that the time of excess emissions (excluding periods of startup, shutdown, or malfunction) divided by the total process operating time in a semi-annual reporting period does not exceed the following levels:

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(1) one percent for control devices used to reduce the total HAP emissions from the LVHC system; and

(2) four percent for control devices by April 16, 2006 used to reduce the total HAP emissions from the HVLC system; and

(3) four percent for control devices used to reduce the total HAP emissions from both the LVHC and HVLC systems.

### 7. Standards for bleaching systems using chlorine or chlorinated compounds.

a. For pulp bleaching systems that use chlorine or any chlorinated compounds, the equipment at each bleaching stage of pulp bleaching systems shall be enclosed and vented into a closed-vent system and routed to a control device to reduce chlorinated HAP emissions (not including chloroform) that:

i. reduces the total chlorinated HAP mass in the vent stream entering the control device by 99 percent or more by weight;

ii. achieves a treatment device outlet concentration of 10 parts per million or less by volume of total chlorinated HAP; or

iii. achieves a treatment device outlet mass emission rate of 0.001 kg of total chlorinated HAP mass per megagram (0.002 pounds per ton) or ODP.

b. For pulp bleaching systems that use any chlorine or chlorinated compounds, the owner or operator shall comply with the following requirements to reduce chloroform air emissions to the atmosphere:

i. comply with the applicable effluent limitation guidelines and standards specified in 40 CFR Part 430; or

ii. use no hypochlorite or chlorine for bleaching in the bleaching system or line.

c. If process modifications are used to achieve compliance with the emission limits specified in 7(a)(ii) and (iii), enclosures and closed-vent systems are not required, unless appropriate.

### 8. Standards for kraft pulping process condensates.

a. The pulping process condensates of kraft pulping systems from the following equipment systems shall be treated to meet the requirements of this section:

i. each digester system;

ii. each turpentine recovery system;

iii. each evaporator system condensates from: (1) the vapors from each stage where weak liquor is introduced (feed stages); and (2) each evaporator vacuum system for each stage where weak liquor is introduced (feed stages);

- iv. each high volume low concentration (HVLC) collection system; and
  - v. each low volume high concentration (LVHC) collection system;
- b. One of the following combinations of HAP-containing pulping process condensates generated, produced, or associated with the equipment systems listed in paragraph (a) of this section shall be subject to the requirements of this paragraph:
- i. All pulping process condensates from the equipment systems listed in paragraph 8 (a) above;
  - ii. the combined pulping process condensates from each HVLC collection system and each LVHC collection system plus pulping process condensate stream(s) that in total contain at least 65 percent of the total HAP mass from the pulping process condensates from equipment systems in paragraph 8(a)(i) through (iii), above;
  - iii. the pulping process condensates from equipment systems listed in this section that in total contain a total HAP mass of 3.6 kilograms or more of total HAP per megagram (7.2 pounds per ton) of ODP for mills that do not perform bleaching or 5.5 kilograms or more of total HAP per megagram (11.1 pounds per ton) of ODP for mills that perform bleaching.
- c. The pulping process condensates from the equipment systems listed in paragraph 8(a) above, shall be conveyed in a closed collection system. Each pulping process condensate from these equipment systems shall be treated according to one of the following options:
- i. recycle pulping process condensate to an equipment system;
  - ii. discharge the pulping process condensate below the liquid surface of a biological treatment system;
  - iii. treat the pulping process condensates to reduce or destroy the total HAPs by at least 92 percent or more by weight; or
  - iv. at mills that perform bleaching, treat the pulping process condensates to remove 5.1 kilograms or more of total HAP per megagram (10.2 pounds per ton) of ODP, or achieve a total HAP concentration of 330 parts per million or less by weight at the outlet of the control device.

#### 9. Clean condensate alternative.

As an alternative to the requirements specified in this section for the control of HAP emissions from pulping systems using the kraft process, an owner or operator must demonstrate to the satisfaction of the Board that the total HAP emissions reductions achieved by this clean condensate alternative technology are equal to or greater than the total HAP emission reductions that would have been achieved by compliance with the requirements of this section.

#### 10. CMS Monitoring requirements.

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(a) Each owner or operator shall install, calibrate, certify, operate, and maintain according to the manufacturer's specifications, a continuous monitoring system (CMS). The CMS shall include a continuous recorder.

(b) A CMS shall be operated to measure the temperature in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs for each thermal oxidizer. Owners and operators shall monitor the parameter specified and for the temperature and concentration limits specified. Owners and operators complying with the HAP concentration requirements in Section 4(b) may install a CMS to monitor the thermal oxidizer outlet total HAP or methanol concentration, as an alternative to monitoring thermal oxidizer operating temperature.

(c) A CMS shall be operated to measure the following parameters for each gas scrubber used to comply with the bleaching system requirements:

- (i) the pH or the oxidation/reduction potential of the gas scrubber effluent;
- (ii) the gas scrubber vent gas inlet flow rate; and
- (iii) the gas scrubber liquid influent flow rate.

(d) As an alternative to the requirements of (c), above, a CMS shall be operated to measure the chlorine outlet concentration of each gas scrubber used to comply with the bleaching system outlet concentration requirement.

(e) A CMS shall be operated to measure the following parameters for each stream stripper used to comply with treatment requirements:

- (i) the process wastewater feed rate;
- (ii) the steam feed rate;
- (iii) the process wastewater column feed temperature.

(f) As an option to the requirements of e, above, a CMS shall be operated to measure the methanol outlet concentration to comply with the steam stripper outlet concentration requirement.

### 11. Biological Treatment System Monitoring

(a) Each owner or operator using a biological treatment system shall perform the following monitoring procedures:

(i) On a daily basis, monitor the following parameters for each biological treatment unit:

- (1) Composite daily sample of outlet soluble BOD<sub>5</sub> concentration to monitor for maximum daily and maximum monthly average;

- (2) Mixed liquor volatile suspended solids;
- (3) Horsepower of aerator unit(s);
- (4) Inlet and outlet liquid flow; and
- (5) Liquid temperature.

(ii) Obtain daily inlet and outlet liquid grab samples from each biological treatment unit to have HAP data available to perform quarterly and compliance percent reduction tests. Perform the following procedures with the liquid samples:

(1) Store the samples for 5 days at 4°C (40°F) to minimize the biodegradation of the organic compounds in the samples. The 5 day storage requirement is required since the soluble BOD<sub>5</sub> test requires 5 days to obtain results. If the results of the soluble BOD<sub>5</sub> test are outside of the range established during the initial performance test, then the archive samples shall be used to perform the percent reduction test specified in 40 CFR 63.457(l).

(2) Perform the percent reduction test procedures specified in 40 CFR 63.457(1) within 45 days after the beginning of each quarter as follows.

(A) The percent reduction test performed in the first quarter (annually) shall be performed for total HAP and the percent reduction obtained from the test shall be at least 92 percent or more by weight.

(B) The remaining quarterly percent reduction tests shall be performed for methanol and the percent reduction obtained from the test shall be at least as great as the methanol reduction determined in the previous first-quarter test specified in paragraph 2(A) above.

(C) The parameter values used to calculate the percent reductions required in paragraphs (2)(A) and (2)(B) above shall be parameter values measured and samples taken in paragraph (a)(i) of this section.

(b) Each pulping process condensate closed collection system shall be visually inspected every 30 days for defects that could result in air emissions to the atmosphere and shall comply with the following inspection and monitoring requirements;

(i) In the case when the collection system is using a closure device for each drain line to control air emissions, the owner or operator shall visually inspect each collection system drain lines to verify that the closure device is in place and there are no defects. Defects include, but are not limited to visible cracks, holes, or gaps in the closure devices/valves; broken, cracked, or otherwise damaged

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seals, gaskets or joints on the drain lines to the collection system and broken or missing plugs, caps, or other closure devices.

(ii) Visually inspect each junction connections to verify that closure devices are in place and there are no defects.

(iii) Visually inspect the unburied portion of each collection line to verify that all closure devices are in place and there are no defects.

(iv) The owner or operator shall maintain a record of the inspection.

(v) In the event that a defect is detected, the owner or operator shall repair the defect as follows:

(1) The owner or operator shall first make efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 15 calendar days after detection except as provided in (2) below.

(2) Repair of a defect may be delayed beyond 15 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the collection system and no alternative is available at the facility site to accept the condensate or wastewater normally managed in the individual collection system or influent line. In this case, the owner or operator shall complete repairs by the end of the next time the process unit that is generating the condensate or wastewater managed in the individual collection system or influent line shuts down.

(3) The owner or operator shall maintain a record of the defect repair.

(c) To establish or reestablish, the values for each operating parameter required to be monitored under paragraph (a) each owner or operator shall use the following procedures:

(i) During the initial performance test required in (e) below or any subsequent performance test, continually record the operating parameter;

(ii) Determinations shall be based on the control performance and parameter data monitored during the performance test, supplemented if necessary by engineering assessments; and

(iii) Provide the rationale for the selected operating parameter value and monitoring frequency and averaging time. Include all data calculations used to develop the value and a description of why the value, monitoring frequency and averaging time demonstrate continuous compliance with the applicable emission standard.

(d) Each owner or operator of a biological treatment system shall perform all the following requirements when monitoring parameters specified in paragraphs (a)(i)(1)

through (a)(i)(3) are below minimum operating parameter values or above maximum operating parameter values established in paragraph (c) above.

(i) The following shall occur and be recorded as soon as practical:

(1) Determine compliance with the 92 percent or more by weight using the percent reduction test procedures specified in 40 CFR 63.457(l) and the monitoring data specified in paragraph (a)(i) above that coincide with the time period of the parameter excursion;

(2) Steps shall be taken to repair or adjust the operation of the process to end the parameter excursion period; and

(3) Steps shall be taken to minimize total HAP emissions to the atmosphere during the parameter excursion period.

(e) An initial performance test is required. Sample and test locations in accordance with 40 CFR Part 63.457(c), 40 CFR Part 63.457(g), 40 CFR Part 63.457(j), 40 CFR 63.457(l) and 40 CFR Part 63.457(n).

*Seventeenth, Sec. 122. Twentieth, Sec. 47. Twenty-First, Sec. 29. Twenty-Second, Sec. 57 and 58.*